

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRA-D-109-DB of 2014

Hardam Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(2) CRA-D-146-DB of 2014

Piara Singh

.... APPELLANT

Versus

State of Punjab

..... RESPONDENT

(3) CRA-D-298-DB of 2014

Narinder Pal Singh and another

.... APPELLANTS

Versus

State of Punjab

..... RESPONDENT

**Reserved on : 20.08.2019
Date of decision : 12.09.2019**

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. D.S. Malwai, Advocate,
for the appellant in CRA-D-109-DB of 2014.

Mr. Preetinder Singh Ahluwalia, Advocate,
for the appellant in CRA-D-146-DB of 2014.

Mr. R.S. Cheema, Senior Advocate, with
Mr. A.S. Cheema, Advocate,
for the appellants in CRA-D-298-DB of 2014.

Mr. Suveer Sheokand, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-109-DB of 2014, CRA-D-146-DB of 2014 and CRA-D-298-DB of 2014, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 23.12.2013 and order dated 24.12.2013, rendered by learned Additional Sessions Judge, Ferozepur, in Sessions Case No. 54 of 14.05.2003. Appellants Hardam Singh, Piara Singh, Narinder Pal Singh and Harcharan Singh along with co-accused Gurcharan Singh, Ramesh Singh, Joginder Singh, Tarlok Singh, Gurmukh Singh, Shankar Lal Sharma, Swaran Singh, Baljinder Singh alias Balwinder Singh, Major Singh, Ramji Lal and Thana Singh were charged with and tried for the offences punishable under Sections 148/302/307 read with Section 149 IPC. Appellants Narinder Pal Singh, Harcharan Singh along with co-accused Gurcharan Singh and Ramesh Singh were also charged with and tried for the offence punishable under Section 27 of the Arms Act. The appellants were convicted and sentenced as under :-

<i>Name of the appellant</i>	<i>Convicted under Section</i>	<i>Sentenced to</i>	<i>In default of payment of fine</i>
Hardam Singh, Piara Singh, Narinder Pal Singh and Harcharan Singh	148 IPC	Rigorous imprisonment for three years and to pay fine of ₹ 5,000/-.	Rigorous imprisonment for six months
Hardam Singh, Piara Singh, Narinder Pal Singh and Harcharan Singh	302/149 IPC	Rigorous imprisonment for life with fine of ₹ 25,000/-.	Rigorous imprisonment for one year.

<i>Name of the appellant</i>	<i>Convicted under Section</i>	<i>Sentenced to</i>	<i>In default of payment of fine</i>
Hardam Singh, Piara Singh, Narinder Pal Singh and Harcharan Singh	307/149 IPC	Rigorous imprisonment for ten years and to pay fine of ₹ 15,000/-.	Rigorous imprisonment for ten months
Narinder Pal Singh	27 of Arms Act	Rigorous imprisonment for two years with fine of ₹ 5,000/-.	Rigorous imprisonment for four months.
Harcharan Singh	27 of Arms Act	Rigorous imprisonment for two years with fine of ₹ 5,000/-.	Rigorous imprisonment for four months.

All the substantive sentences were ordered to run concurrently.

3. Co-accused Gurcharan Singh, Ramesh Singh, Gurmukh Singh, Shankar Lal Sharma, Swaran Singh, Joginder Singh Constable, Baljinder Singh alias Balwinder Singh, Major Singh, Ramji Lal and Thana Singh were acquitted of the charges framed against them. Co-accused Joginder Singh retired Sub Inspector and Tarlok Singh died during the pendency of trial, therefore, criminal proceedings against them were abated. Co-accused Kala Singh was declared proclaimed offender.

4. Narinder Pal Singh – appellant No.1 in CRA-D-298-DB of 2014 died during pendency of the appeal on 27.11.2017. Hence, appeal qua him stands abated.

5. The case of the prosecution, in a nutshell, is that earlier, FIR No. 179 was registered on 25.10.1991 at Police Station City Abohar. It was registered on the basis of statement made by ASI Narinder Pal Singh. According to the prosecution case, workers of Bhawani Cotton Mill situated in City Abohar had gone on strike. The Mill management, in order to

resolve the issue, sought interference of the police. On 25.10.1991, ASI Narinder Pal Singh reached in the premises of the Mill. He tried to persuade the labourers/workers. Ram Avtar, Uttam Chand and Bangali Babu, being members of INTUC, used to interfere at the time of negotiations. They were not employees of the Mill. The Mill workers were holding *dharna*. The police party resorted to firing from their respective weapons. Six persons were killed at the spot. Two persons succumbed to injuries in the hospital. Eighteen persons were injured.

6. Ram Avtar and another had filed Criminal Miscellaneous No. 9179-M of 1996 under Section 482 of the Code of Criminal Procedure seeking direction for registration of first information report against respondents No.5 to 42, arrayed therein. The learned Single Judge of this Court on 22.01.1997 ordered that on the basis of complaint Annexure P-2, first information report be recorded and thereafter, investigation be conducted by a person not below the rank of Deputy Inspector General of Police of the range (area). This is how, the FIR was registered in the year 1997. According to the FIR, registered in sequel to the order passed by this Court on 22.01.1997, there was an industrial dispute pending since 1991. The Management remained adamant. Two labourers, namely Anil Kumar Tiwari and Ram Chand, sat on hunger strike on 21.10.1991. There used to be a gate meeting every day from 3.00 PM to 4.30 PM. The mode of protest adopted by the labourers was peaceful and un-armed. On 25.10.1991, the workers were called inside the Mill. The Security Officer of the Mill was armed with 12 bore DBBL gun. The police officials were armed with service weapons. The workers were threatened. At about 3.28 PM, the

Security Officer and watchman, at the exhortation of their employers, started firing from their respective weapons. In the firing by the police and the Management, Maan Singh, Ram Gopal, Basant, Jai Ram, Shri Krishan, Data Ram and two boys, namely Pappu aged about 11 years and Narinder Kumar aged about 18 years, were killed. Eighteen persons received injuries. 12 bore guns, rifles, pistols and revolvers were used against the peaceful protesters. In-charge of the police party was not competent to disperse any assembly. The police had not obtained any legal order from any Executive Magistrate for firing at peaceful assembly. In order to save skin of the police officials, FIR No. 179 dated 25.10.1991 under Sections 307/342 IPC was registered against the labourers. Thus, it is evident that the police personnel present on the spot were not authorised to fire. They had not obtained any order from the competent authority to open firing at peaceful mob. In the earlier FIR, registered on the basis of statement of Narinderpal Singh, it was mentioned that Tehsildar had ordered the police to fire in the air for their safety. The police party fired many fires in the air, but the strikers did not move. The police fired at the strikers for their own safety. 20-25 workers got injured. Police personnel also got injuries.

7. Shri K.L. Lekhi, Deputy Inspector General of Police conducted investigation in the FIR, registered in pursuance of the directions of the learned Single Judge. He recorded statements of the witnesses under Section 161 Cr.P.C. He prepared rough site plan. Challan was presented against seven persons, namely Gurcharan Singh, Ramesh Singh, SI Joginder Singh, ASI Narinder Pal Singh, ASI Tarlok Singh, Constable Gurmukh Singh and Shankar Lal Sharma, Executive Director of the Mill. During trial, ten more

persons, namely ASI Harcharan Singh, ASI Hardam Singh, HC Piara Singh, HC Swaran Singh, Constable Joginder Singh, Constable Baljinder Singh, Constable Major Singh, PHG Ramji Lal, PHG Kala Singh and PHG Thana Singh were summoned as additional accused.

8. The prosecution examined as many as 21 witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated in the case. They examined Constable Sandeep Kumar in their defence. The appellants were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

9. Learned counsel appearing on behalf of the appellants have vehemently argued that the sanction under Section 197 Cr.P.C. was not obtained. They have also drawn attention of the court to Chapter X of the Code of Criminal Procedure, 1973, more particularly Section 132 of the Code. According to them, the prosecution has failed to prove its case against the appellants beyond reasonable doubt. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

10. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

11. PW.1 Uttam Chand deposed that on 25.10.1991, he was present at the gate of Bhawani Cotton Mill, Abohar. Two employees of the Mill, namely Anil Kumar and Ram Chander, were sitting on strike in connection with their demands. The employees started gathering between 3.00 PM and 4.00 PM. At about 3.00 PM, ASI Narinder Pal Singh and ASI Tarlok Singh

(since deceased) came at the site of *dharna*. In his presence, they told Ram Avtar, President of the Union, and Babu Bangali, Secretary of the Union, to come with them for negotiations with the Mill management. The President and Secretary of the Union went to the Mill management with them. They came after ten minutes and told them that Shankar Lal Sharma, R.N. Rastogi, B.D. Sharma, M.K. Gandhi, P.K. Singal and Ram Singh were present there. They were asked to call off the strike. In the meantime, ASI Narinder Pal Singh and ASI Tarlok Singh came from the gate and had gone to other side of the road. They started firing upon them with their service revolvers. Six persons, namely Maan Singh, Ram Gopal, Basant, Jai Ram, Shri Krishan and Data Ram died on the spot. Eighteen persons were injured. One canter of blue colour came from Police Station Sadar Abohar. SHO Joginder Singh and other police officials were sitting in the canter. They started firing from the railway crossing, as a result of which Pappu and Narinder Kumar died. He escaped. He had seen the police officials removing the dead bodies and the injured persons. First firing was started at 3.28 PM. The dead bodies and injured were taken to Civil Hospital, Abohar. Narinder Pal Singh had himself lodged the FIR. Before the firing, no light action, i.e. lathi charge, sprinkling of water and warning, was taken by the police officials against the agitators. FIR No. 179/1991 was registered by the police in order to save their skin. The FIR against the accused was registered on the directions issued by this Court. He identified the accused in the court, except R.N. Rastogi, P.K.Singal, M.K. Gandhi, B.D. Sharma, Ram Singh and Tribhawan. In his cross-examination, he deposed that his statement was recorded twice. One statement was recorded on 25.04.1997

under the supervision of DIG Lekhi. He had got recorded in his police statement dated 25.04.1997 that before the firing, no light action, i.e. lathi charge, sprinkling of water and warning, was taken by the police officials against the agitators. He, Ram Avtar and Bangali Babu were not injured in the incident. The guards of the Mill were also armed with 12 bore guns.

12. PW.2 Ram Avtar testified that he was President of Cotton Mill Labour Federation. He was present in Bhawani Cotton Mill, Abohar, on 25.10.1991. The workers had given demand notice to the Mill management. On 25.10.1991, they were holding meeting in front of the main gate of Bhawani Cotton Mill. Meeting was to be held between 3.00 PM to 4.00 PM. Tarlok Singh ASI and Narinder Pal Singh ASI came to him at about 3.05 PM. They asked them to go inside and they would arrange meeting with Mill management. He along with Bangali Babu, Tiwari went inside the office. They met Shankar Lal Sharma, Executive Director of the Mill, and others. All of them asked them to call off the strike, otherwise they would be killed. He asked them not to threaten them. He came back to the place where *dharna* was held. He narrated the incident to their President Uttam Chand. In the mean while, Narinder Pal Singh came there. He fired from his service revolver towards him. Then all the police officials, who were present there, also started firing towards him and other workers. Narinder Pal Singh, Hardam Singh, Harcharan Singh, Gurjant Singh, Swaran Singh, Piara Singh, Tehal Singh, Jagsir Singh, Sukhwinder Singh, Baljinder Singh, Gurmukh Singh, Major Singh, Harbans Singh, Sahi Kant, Balbir Singh, Amarjit Singh, Jaswinder Singh, Joginder Singh, Kuldip Singh, Jagdish

Singh, Surinder, again said Sukhbir Singh, Ravinder Singh, Ramji Lal, Kala Ram, Nand Kishor, Sumesh, Kishan, Thana Singh, SHO Joginder Singh shot dead a boy of 11 years and another boy of 18 years. Four persons died at the spot. Two persons succumbed to their injuries at some distance. Eighteen persons received injuries. Dead bodies and the injured persons were removed to hospital. The firing took place at 3.28 PM. No action was taken by the administration against the police and Mill management. A case was registered against them regarding this occurrence. They approached this Court and filed a writ petition. This Court ordered investigation of the case to be conducted by the D.I.G. In his cross-examination, he deposed that he made statement before Lekhi Sahib DIG. He was confronted with portions Mark A, Mark B and Mark C of his statement. He admitted that a cross case vide FIR No. 62 dated 16.04.1997 was also registered against him and others. He was at the distance of 15 yards when Narinder Pal Singh opened fire. He did not know who fired upon him. He knew names of all the accused persons at the time of assault upon him. The police force consisted about 28/30 persons. He denied the suggestion that the workers were throwing bricks. He also denied the suggestion that the Naib Tehsildar had told the workers to disperse. He further denied the suggestion that they were lathi charged. He also denied the suggestion that the workers advanced towards the police force. He denied the suggestion that the firing took place on the orders of Megh Raj. He also denied the suggestion that some officials of C.R.P.F. and B.S.F were present at the spot. He admitted that at the time of occurrence, B.L. Sikka was the SDM and Kuldip Singh was the DSP.

13. PW.3 Bangali Babu deposed that he was working as labourer at

Bhawani Cotton Mill, Abohar. He was elected as General Secretary of INTUC. They gave demand notice. On 25.10.1991, police officials came, when they were holding meeting of the Union on the gate of the Mill. He knew only Narinder Pal Singh. He did not remember the names of other persons who came there. The police officials told them to complete the proceedings of meeting. Thereafter, shots were fired. Maan Singh, Jai Ram, Data Ram, Basant, Shri Krishan, Narain, Pappu and one other person sustained injuries. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor. He was confronted with his statement made earlier. He admitted that one blue colour canter and one jeep came from the side of Railway line. The shots were continuously fired. Due to the firing from the vehicles, Pappu and Narinder died. There were Central Police Force Personnel on duty near the *dharna* site, but they did not fire any shot on the labourers gathered there. The authorities had fired on the mob with plastic bullets. Thereafter, real bullets were fired. Due to that firing, some labourers and civilians were killed.

14. PW.9 Mata Parshad deposed that he was working in Bhawani Cotton Mill, Abohar. *Dharna* by labour Union was continuing on the gate of the Mill. The police tried to remove them from the gate of the Mill. When they did not vacate the place, then the police fired tear gas shells. They started running. Then one canter of blue colour came there. Some shots were fired. He received one gun shot injury on his right foot. He did not know who fired shots. He was declared hostile and was cross-examined by the learned Additional Public Prosecutor. He was confronted with his previous statement Mark A. In his cross-examination by the learned defence

counsel, he deposed that the police had loud speaker with them. Tehsildar was also present at the time of occurrence. Police personnel had given warning to the labourers holding nakabandi. Some labourers tried to leave that place. The labourers attacked the police with brick bats. Then police personnel threw tear gas shells on the striking labourers. When the labourers did not stop attacking the police personnel and Tehsildar, additional force came there in a blue canter and a jeep. Police had also fired plastic bullets to disperse the striking labourers. Police fired the rifle shots from the blue canter and jeep, when the labourers did not desist from attacking the police personnel. One of the bullets hit on his right ankle. The shots were fired only from the blue canter and the jeep. Other police personnel present at the spot or guard of the Mill did not fire any shot.

15. PW.10 Achhe Lal testified that he was working in Bhawani Cotton Mill. The Director of the Mill asked the leaders of the Union to effect compromise. In the evening at about 3.00 PM, police personnel also reached at the spot. They requested the labourers to lift the *dharna* and vacate the place. When the labourers refused to lift the *dharna*, the police brought additional force. The police officers were giving warning to the workers to vacate the place immediately. Leaders of the Union said that no body could make the labourers to lift the *dharna*. The police warned the labourers to vacate that place but the labourers did not vacate the place. Then the police used tear gas shells to disperse the labourers. When they did not disperse, the police resorted to the firing. Gurcharan Singh and Resham Singh, guard of the Mill, did not fire any shot on the labourers. He was also declared hostile and was cross-examined by learned Additional Public

Prosecutor. He was confronted with his previous statement Mark B. In his cross-examination by the learned defence counsel, he deposed that the labourers on the instigation of leaders attacked the police and Tehsildar. First of all, tear gas shells were thrown by the police. Then the labourers attacked the police and Tehsildar and pushed them upto railway gate. Then plastic bullets were fired. Thereafter, brick bats were thrown on the police. Additional force was summoned. A blue canter and a jeep came there. The persons in the canter and jeep fired towards the labourers. One of the shots hit him on the left knee. The police personnel and mill guards present at the place of occurrence did not fire any shot.

16. PW.11 Kamal Lal Lekhi deposed that he was posted as DIG, Ferozepur on 17.04.1997. As per the directions of this Court, investigation of this case was entrusted to him. He recorded statements of the witnesses. In his cross-examination, he admitted that as per his report, Megh Raj Tehsildar was on duty at the time of occurrence. It came in his enquiry that tear gas shells and plastic bullets were fired. It came in the statements of the witnesses that some firing was done from the canter of blue colour.

17. PW.13 Harbhaj Ram deposed that he was posted as SHO Police Station City Abohar on 25.10.1991. He sent ruqa to the Police Station, on the basis of which FIR No. 179 was registered vide Ex.PW.13/1. FIR was registered by Inspector Gurdip Singh. He also moved an application for conducting post mortem examination. He also took into possession empty cartridges of 12 bore, 32 bore and .22 bore rifle. In his cross-examination, he deposed that he had prepared rough site plan on the pointing of Naib Tehsildar Megh Raj and on the pointing of Tarlok Singh ASI. He checked

the arms and ammunition lying in Police Station City Abohar and found all weapons and ammunition intact. Fifty five tear gas shells of long range, nine of single range and twenty rounds of plastic were fired during the occurrence. The arms and ammunition given to the police officials of his Police Station were also found intact. During his investigation, he found that one canter of blue colour also came on the spot.

18. PW.14 Megh Raj testified that in the year 1991-92, he was posted as Naib Tehsildar, Abohar. Shri B.L. Sikka was SDM at that time. The workers of Bhawani Cotton Mill were on strike. He tried to patch up the matter. ASI Narinder Pal Singh along with police officials was present with him. Employees were large in number. He talked with leaders of the employees of the Mill. He entered through small gate in the premises of the Mill and talked with the management. The management told him that they have made telephonic calls to SDM and DSP to get the gate of the Mill vacated. He came out of the Mill. The employees told him that management was aware about their *dharna*. They refused to vacate the gate of the Mill. Then he went to the SDM and apprised the situation to the SDM. The SDM directed him to be present at the spot and try to get the gate vacated. When he came back, the Mill workers were giving instigating speeches. He tried to pacify them. Then a warning was issued to them through ASI Narinder Pal Singh. They started throwing brick bats. He directed ASI Narinder Pal Singh to fire tear gas shells in order to disperse the mob. When the tear gas shells were about to be fired, the workers threw brick bats towards them. People started running here and there. He went towards the office of PSEB. Then he heard the fire shots from his back from the side of gate. He also

heard gun shots from railway crossing side. When he entered into the office of PSEB, then two officers of BSF and CRPF came to him and asked him if he had given the order to the police to fire. However, he told them that he had not passed any such order. He refused to sign the papers which they were having. He apprised the SDM of all the facts on telephone. After few minutes, SDM was found standing near the railway crossing. In his cross-examination, he deposed that he had not gone through the statement, i.e. Ex.PW.14/A, before signing the same, nor it was read over to him. His statement was not attested by any DSP in his presence. He did not order for firing plastic bullets. He admitted that it was being stated that Tehsildar be not spared. However, he did not know if these words were used by Ram Avtar. He did not pass any order of lathi charge, though he was confronted with his statement Ex.PW.14/A. He had not given directions to police to fire in the air.

19. PW.15 Gurmit Singh Randhawa deposed that he was posted as DSP, Abohar on 04.02.1998. Investigation of this case was handed over to him. He recorded statements of the witnesses on 08.02.1998. He arrested the accused. In his cross-examination, he admitted that at the time of occurrence, Section 144 Cr.P.C. was in force.

20. PW.16 Mukhtiar Singh Dahiya testified that he was posted as DSP, Sub Division Abohar, on 03.10.1997. He also conducted investigation of this case. In his cross-examination, he deposed that Megh Raj, Executive Magistrate, had shown him the order of firing, which he had pronounced on the date of occurrence.

21. PW.17 Gurjant Singh had sent the body of Shri Krishan for

post mortem examination.

22. PW.20 Banke Lal is other injured witness. According to him, the employees were on strike. The police had asked them to vacate the gate of the Mill. There were 10/15 police officials. Agitators and labourers pushed the police party upto the railway line. Police officials fired plastic bullets. Thereafter, some police officials opened fire at the labourers and one fire also hit him on the left arm near the wrist. He ran away from the spot. He was admitted in the hospital. In his cross-examination, he deposed that the police fired shots on the orders of the Tehsildar. The accused did not fire upon him and other agitators. BSF personnel had opened fire at the agitators. The guards of the Mill did not open fire.

23. PW.4 Dr. R.K. Arora conducted post mortem examination on the body of Maan Singh. He noticed following injury on the body :-

1. A lacerated penetrating wound 4 cm x 2 cm with inverted margins was present on the lateral aspect of the left hip on the upper 1/3rd of thigh. The adjacent skin was abraded.

On dissection of the injury, he found under the wound upper end of the femur bone was fractured and femoral vessels were ruptured and haematoma was present along the track. A bullet was found in the pubic region just above the pubic symphysis. There was no other mark of injury. The injury was ante mortem in nature. Stomach contained about 100 CC of fluid. Chyme was present in the small intestines. Faecal matter was present in the large intestine. Urinary bladder was empty. All the other organs were normal and healthy. The cause of death in his opinion was shock and haemorrhage as a result of fire arm injury which was sufficient to cause

death in the ordinary course of nature. Time that elapsed between injury and death was instantaneous and between death and post mortem was about 12 to 15 hours.

24. PW.5 Dr. L.C. Thakral conducted post mortem examination on the body of Basant Singh. He noticed following injuries on the body :-

1. A lacerated punctured wound 1.5 cm x 1 cm present on the back of chest on left side in middle close to mid line. Margins were inverted. Clotted blood present.
2. A lacerated punctured wound 4 cm x 3 cm present on front of chest on left side lateral to mid line and medial to the left nipple. Margins were inverted. Clotted blood was present. On opening chest, injury No.1 communicated with injury No.2. Underlying ribs were fractured. Left lung was lacerated badly. Heart was also lacerated. About 1000 CC of blood present in the left side of chest cavity.

The cause of death in his opinion was shock due to haemorrhage and injury to heart as a result of injury No.1 which was sufficient to cause death in due course of events. The time between injuries and death was instantaneous and between death and post mortem was between 12 to 24 hours. He also medico legally examined Banke Lal and found following injury on his body :-

1. A stitched wound 2 cm x 0.5 cm present on the lateral aspect of left fore-arm, just above the wrist joint. X-ray advised.

As per bed head ticket No. 3689 dated 25.10.1991, there was lacerated punctured wound 2 cm x 1 cm on the lateral aspect of left fore-arm just above the wrist. The margins were inverted.

25. PW.6 Dr. Prithvi Raj Bhadu conducted post mortem examination on the body of Narinder Kumar. He found following injuries on the body :-

1. There was a lacerated wound 1 cm x 0.5 cm with inverted margins, present on right side of face in its middle.
2. There was a lacerated wound 5 cm x 4 cm with everted margins present on back of left side of neck in its upper part. Clotted blood was present in the wound.

The cause of death in his opinion was shock and haemorrhage as a result of injuries No.1 and 2 which were sufficient to cause death in due course of events. All the injuries were ante mortem in nature. The time between injuries and death was immediate and between death and post mortem was between 12 to 24 hours. He also conducted post mortem examination on the body of Jai Ram. He noticed following injury on the body :-

1. There was a lacerated punctured wound 1.5 cm x 1 cm with inverted margins, present on epigastric region of abdomen in its middle in mid line position. Clotted blood was present.

The cause of death in his opinion was shock and haemorrhage as a result of injury No.1 which was sufficient to cause death in due course of events. The injury was ante mortem in nature. The time between injury and death was about six hours and between death and post mortem was between 6 to 12 hours. He also medico legally examined Bimal Kumar and found following injuries on his body :-

1. There was a lacerated wound 0.5 cm x 0.5 cm with inverted margins, just below left lower lid on medial

side. Fresh bleeding was present. Advised X-ray.

2. There was a contusion 8 cm x 2 cm reddish in colour on back of left thigh in its upper part.

He also medico legally examined Achhe Lal and found following injury on his body :-

1. There was a lacerated punctured wound 0.75 cm x 0.75 cm with inverted margins on front of left knee joint. Fresh bleeding was present. Advised X-ray.

He also medico legally examined Ramesh and found following injury on his body :-

1. There was a lacerated wound 2.5 cm x 1 cm on right side of occipital region of skull, 7 cm above the pinna of right ear. Fresh bleeding was present. Advised X-ray.

He also medico legally examined Sukhbir and found following injuries on his body :-

1. There was a lacerated wound 0.5 cm x 0.5 cm with inverted margins on back of penis, near glans penis. Fresh bleeding was present.
2. There was a lacerated punctured wound 0.5 cm x 0.5 cm with inverted margins present on front of scrotum. Fresh bleeding was present.
3. There was a lacerated punctured wound with everted margins 4 cm x 3 cm present on back of scrotum.

26. PW.7 Dr. D.P. Godara medico legally examined Shiv Kumar and noticed following injury on his person :-

1. There was a lacerated and punctured wound 1 cm x 0.75 cm on left lateral part of chest. Patient complained of difficulty in breathing. Fresh bleeding was present. The margins of the wound were inverted. X-ray was advised.

B.P was 100/70 mmhg. Pulse was 90 per minute. Patient was conscious.

He also medico legally examined Lanjeet and noticed following injury on his person :-

1. There was a lacerated wound 3 cm x 2 cm on antero medial aspect of right thigh. Margins were inverted. Fresh bleeding was present. Patient was conscious. B.P was 88/70 mmhg. Pulse was 90 per minute. X-ray was advised.

He also conducted post mortem examination on the body of Ram Gopal. He noticed following injuries on his body :-

1. A lacerated wound 1 cm x 1 cm on left buttock. Margins were inverted.
2. A lacerated wound 5 cm x 2 cm on left inguinal region. Margin were inverted.

The cause of death in his opinion was haemorrhage and shock as a result of injuries of femoral vessels i.e. injuries No.1 and 2. Injuries were ante mortem in nature and were sufficient to cause death in due course of events. Probable time between injuries and death was immediate and between death and post mortem was between 12 to 24 hours. He also conducted post mortem examination on the body of Data Ram. He noticed following injuries on his body :-

1. A lacerated punctured wound 1.5 cm x 1 cm on right side of chest in its anterior and lower part. It was 10 cm below right nipple. Margins were inverted.
2. There was a lacerated wound 5 cm x 3 cm on back and lower part of right chest. Margins were averted.

The cause of death in his opinion was haemorrhage and shock as a result of injuries No.1 and 2 which were sufficient to cause death in due course of events. Injuries were ante mortem in nature. Probable time between injuries and death was immediate and between death and post mortem was between 12 to 24 hours.

27. PW.8 Dr. Hakumat Rai conducted post mortem examination on the body of Shri Krishan. He noticed following injuries on the body :-

1. Lacerated wound on right side of head, vertical limbs extending from pinna of right ear upwards to right temporal ridge. It was measuring 8 cm x 2.5 cm and horizontal limb started from right temporal region to left frontal region measuring 12 cm x 6 cm. It was taken as second injury. Vertical margins were inverted, whereas horizontal margins were everted. Skull cavity was lying open. Brain matter with meninges were coming out of the horizontal part of wound. Clotted blood was present at sight.
2. Lacerated wound 3 cm x 1 cm on the left side of forehead just above the center of left eyebrow. Scalp deep.

All the injuries were ante mortem. Injury No.1 was due to fire arm. The cause of death in his opinion was laceration of brain and result of injury No.1 which was sufficient to cause death in the ordinary course of nature. The time elapsed between injuries and death was about 12 hours and between death and post mortem was within 24 hours.

28. PW.19 Dr. R.S. Atwal conducted post mortem examination on the body of Pappu. He noticed following injuries on the body :-

1. Lacerated wound 3 x 2 cms on the right side of upper

part of thigh on its medial side. Margins were inverted. Clotted blood was present.

2. Lacerated wound 6 x 4 cms on the back of right gluteal region. Margins were everted. Clotted blood was present in the wound.

The cause of death in his opinion was shock due to haemorrhage, as a result of injuries No.1 and 2 which were sufficient to cause death in ordinary course of nature. All the injuries were ante mortem in nature. Probable time that elapsed between injuries and death was immediate and between death and post mortem was between 12 to 24 hours.

29. Dr. Dyal Singh, who was examined as PW.3 before summoning of additional accused, medico legally examined Jai Parkash. He noticed following injuries on his person :-

1. A lacerated wound 0.75 cm x 0.75 cm, margins were inverted, was present on the posterior aspect of left thigh, hair around injury was burnt. Advised X-ray.
2. A lacerated wound 1 cm x 1 cm was present on the back of left buttock, 3 cm lateral to anus. Advised X-ray. Margins was averted, wound was communicated with injury No.1.
3. A lacerated wound 6 cm x 1 cm x muscle deep was present on the back of right buttock. Surgical opinion was advised.

30. DW.2 Sandeep Kumar produced summoned record, i.e. original register No. 16 of year 1991 regarding ammunition and tear gas shells. In his cross-examination, he admitted that he was not posted there in the year 1991. He did not know in whose hand writing the relevant entries were made. He had no personal knowledge of the facts of the present case. He

was again examined as DW.3 on 13.12.2013. He produced FIR register of Police Station City Abohar, including FIR No. 179 dated 25.10.1991. Narinder Pal Singh ASI was the complainant in the FIR. Copy of the FIR was proved as Ex.DW.3/A.

31. The incident is dated 25.10.1991. The FIR was registered on the basis of statement made by ASI Narinder Pal Singh. The labourers/workmen of Bhawani Cotton Mill, Abohar, had approached this Court. This Court vide order dated 22.01.1997 ordered fresh investigation. PW.11 Kamal Lal Rekhi had conducted fresh investigation. Thereafter, FIR was registered on 16.04.1997.

32. PW.1 Uttam Chand has categorically deposed that on 25.10.1991, workmen of the Mill were present on the gate of the Mill. ASI Narinder Pal Singh came there along with ASI Tarlok Singh. They tried to facilitate negotiations. In the meantime, ASI Narinder Pal Singh and ASI Tarlok Singh came from the gate and went to other side of the road. They started firing with their service revolvers. Six persons, namely Maan Singh, Ram Gopal, Basant, Jai Ram, Shri Krishan and Data Ram died on the spot. Eighteen persons were injured. He had given names of the injured persons as well. A canter of blue colour came from Police Station Sadar Abohar, in which SHO Joginder Singh and other police officials were present. They also started firing from the railway crossing, as a result of which Pappu and Narinder Kumar died. The firing started at 3.28 PM. The police removed dead bodies and injured to Civil Hospital, Abohar. He further deposed that before firing, no light action, i.e. lathi charge, sprinkling of water and warning, was taken by the police officials against the agitators.

33. PW.2 Ram Avtar has named the police officials who had fired upon the agitators. He stated that Narinder Pal Singh, Hardam Singh, Harcharan Singh, Gurjant Singh, Swaran Singh, Piara Singh, Tehal Singh, Jagsir Singh, Sukhwinder Singh, Baljinder Singh, Gurmukh Singh, Major Singh, Harbans Singh, Sahi Kant, Balbir Singh, Amarjit Singh, Jaswinder Singh, Joginder Singh, Kuldip Singh, Jagdish Singh, Surinder, again said Sukhbir Singh, Ravinder Singh, Ramji Lal, Kala Ram, Nand Kishor, Sumesh, Kishan, Thana Singh, SHO Joginder Singh. They shot dead a boy aged 11 years and another boy of 18 years old. Four persons died at the spot. Two persons succumbed to their injuries. One out of them succumbed to his injuries at Nehru Hospital and one died at Faridkot hospital. The firing took place at 3.28 PM. He categorically denied the suggestion that Naib Tehsildar ordered firing of tear gas shells on the workers. He also denied the suggestion that Naib Tehsildar told the workers that Section 144 Cr.P.C. was imposed. He also denied the suggestion that the workers advanced towards the police force to kill them. No fire was shot in the air. He denied that some officials of CRPF and BSF were present at the spot.

34. PW.3 Bangali Babu deposed that the police had fired killing Maan Singh, Jai Ram, Data Ram, Basant, Shri Krishan, Narain, Pappu and one other person. Though he was declared hostile, but in cross-examination by learned Additional Public Prosecutor, he admitted that one blue colour canter and one jeep came from the side of railway line and shots were continuously fired. He also admitted that due to firing, Pappu and Narinder died.

35. PW.9 Mata Parshad had received bullet injury on his right foot.

According to him, one canter of blue colour came at the spot and some body fired shot. He was also declared hostile. In his cross-examination by learned defence counsel, he deposed that the police personnel threw tear gas shells on the agitators. Thereafter, additional force came in a blue canter and a jeep. Police had also fired plastic bullets. Police fired rifle shots from the blue canter and jeep. One of the shots also hit on his right ankle.

36. PW.10 Achhe Lal also received bullet injury on his left knee. According to him, Gurcharan Singh and Resham Singh, guards of the Mill, did not fire any shot. He was also declared hostile. In his cross-examination by learned defence counsel, he deposed that the police threw tear gas shells. When the agitators did not disperse, the police resorted to firing. Additional force was summoned. It came in blue canter and jeep. The persons riding blue canter and jeep fired towards the mob.

37. PW.20 Banke Lal is also injured witness. According to him, the police officials firstly fired plastic bullets on the agitators. Thereafter, some police officials opened fire at the labourers.

38. PW.11 Kamal Lal Lekhi, the then DIG, Ferozepur, conducted investigation.

39. PW.14 Megh Raj is the most material witness. He was posted as Naib Tehsildar in the year 1991-92. He talked with the leader of the employees Union. The situation was tense. He went to the SDM. He apprised him of the situation. SDM directed him to be present on the spot. He tried to pacify the workers. They started throwing brick bats. He directed ASI Narinder Pal Singh to burst tear gas shells in order to disperse the mob. When tear gas shells were about to be fired, then the workers threw volley

of brick bats towards them. People started running hither and thither. He started moving towards the office of PSEB in order to apprise the SDM about the latest position. Then he heard the fire shots from his back from the side of gate. He also heard gun shot fires from railway crossing side. When he entered the office of PSEB, two officers of BSF and CRPF came to him and asked him if he had ordered to fire shots. He told that he had not issued any such order. Then he apprised the SDM of all the facts. In his cross-examination, he categorically deposed that he did not give directions to the police to fire in the air.

40. The post-mortem on the body of Maan Singh was conducted by PW.4 Dr. R.K. Arora vide post mortem report Ex.P2. He died due to injuries received in pubic region. Post-mortem examination on the body of Basant was conducted by PW.5 Dr. L.C. Thukral vide Ex.P6. He died due to high velocity projectile. PW.6 Dr. Prithvi Raj Bhadu conducted post-mortem examination on the bodies of Narinder Kumar and Jai Ram vide Ex.P12 and Ex.P13, respectively. Narinder Kumar received lacerated punctured wounds on right side of his face and back side of his neck. Jai Ram received lacerated punctured wound on epigastric region of abdomen. PW.7 Dr. D.P. Godara conducted post-mortem examination on the bodies of Ram Gopal and Data Ram vide Ex.P26 and Ex.P28, respectively. They died due to high velocity projectiles. Post-mortem examination on the body of Shri Krishan was conducted by PW.8 Dr. Hakumat Rai vide Ex.P16. He also died due to high velocity projectile. Post-mortem examination on the body of Pappu was conducted by PW.19 Dr. R.S. Athwal vide Ex.PW19/A. He received lacerated wounds on upper part of his thigh and right gluteal region.

41. Injured Bimal Kumar, Achhe Lal, Rameshwar and Sukhbir Singh were medico legally examined by PW.6 Dr. Prithvi Raj Bhadu vide MLRs Ex.P13, Ex.P14, Ex.P16 and Ex.P18, respectively. Bimal Kumar, Achhe Lal and Sukhbir Singh received injuries due to fire arm caused by high velocity rifle bullets. Banke Lal was medico legally examined by PW.5 Dr. L.C. Thukral vide MLR Ex.P9. He received injury by fire arm. Shiv Kumar and Laljeet were medico legally examined by PW.7 Dr. D.P. Godara vide MLRs Ex.P22 and Ex.P24, respectively. Injured Jai Parkash was examined by Dr. Dyal Singh vide MLR Ex.P2, who was examined as PW.3 before summoning of additional accused.

42. PW.2 Ram Avtar and PW.9 Mata Parshad, Jagdish Rai, Inderjit, Bhagwan Mishra, Maharaj Singh, Munish Pal, Ravinder and Nek Ram also received injuries in the incident.

43. What emerges from the statements of witnesses, discussed here-in-above, is that on 25.10.1991, workers of Bhawani Cotton Mill, Abohar, had gathered in front of the gate of the Mill. ASI Narinder Pal Singh and ASI Tarlok Singh had come on the spot. They tried to lift the *dharna*. PW.14 Megh Raj, the then Naib Tehsildar, was present on the spot. The workers started throwing brick bats at the police. PW.14 Megh Raj had not issued any orders directing the police to fire at the workers. However, as per the statements of PW.1 Uttam Chand and PW.2 Ram Avtar, the police started firing, resulting into death of eight persons. Eighteen persons were injured. The dead bodies and the injured persons were taken to hospital. Post mortem was got conducted. The deceased died due to fire arm injuries.

The injured were also medico legally examined by the doctors, as discussed here-in-above. PW.1 Uttam Chand and PW.2 Ram Avtar categorically deposed that before firing, no light action, i.e. lathi charge, sprinkling of water and warning, was taken by the police officials against the agitators. Though PW.3 Bangali Babu, PW.9 Mata Parshad and PW.10 Achhe Lal deposed that the police had used plastic bullets and tear gas shells, but their statements are at variance with the statements of PW.1 Uttam Chand, PW.2 Ram Avtar and PW.14 Megh Raj. PW.14 Megh Raj has categorically stated that he heard fire shots from the side of the gate and also from railway crossing side. He had categorically told the officials of CRPF and BSF that he had not given orders to the police to open fire, though he had directed ASI Narinder Pal Singh to fire tear gas shells in order to disperse the mob.

44. Earlier, the FIR was registered on 25.10.1991 at the instance of ASI Narinder Pal Singh. In the FIR, it was categorically mentioned by Narinder Pal Singh himself that the police had resorted to firing. Thus, statement of PW.13 Harbhaj Ram that arms and ammunition lying in Police Station were found intact is false. Though PW.16 Mukhtiar Singh Dahiya tried to prove that Megh Raj, Executive Magistrate, had shown him copy of the order of firing, but it was never placed on record.

45. The fact of the matter is that the police personnel had opened firing on the mob, resulting into eight deaths, including two boys, aged 11 years and 18 years. The police was never ordered to open firing. PW.14 Megh Raj had only asked them to use tear gas shells. Since the appellants started firing at the mob of their own, they would not be entitled to any protection under Section 197 Cr.P.C. The firing of bullets without authority

of law will not come within the ambit of their official duty. They were to obey the command of PW.14 Megh Raj, who was present at the spot. Similarly, they cannot take the benefit of Section 132 Cr.P.C.

46. It is settled law by now that Sections 132 and 197 Cr.P.C. protect responsible public servants against the institution of possible vexatious and mala fide criminal proceedings for offences alleged to have been committed by them while they were acting or purporting to act as such in the discharge of their official duty. However, it is not every offence committed by a public servant which requires sanction under S. 197, nor even every act done by him while he is actually engaged in the performance of the official duty. It is only when the act complained of is directly concerned with his official duty so that if questioned, it could be claimed to have been done by virtue of the office that sanction may be considered necessary. In the present case, there was no unlawful assembly. The assembly was never commanded to disperse. It was not the case of the police that the assembly did not disperse on command. Thus, there was no occasion for the police to fire at the peaceful gathering.

47. Their Lordships of the Supreme Court in **Nagraj Vs. State of Mysore, AIR 1964 Supreme Court 269** have held that it is well settled that the jurisdiction of the Court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded. It follows, therefore, that the contention that a police officer cannot be prosecuted without the sanction from the State Government for an offence which he alleges to have taken place during the course of his

performing the duties under Chapter IX of the Code of Criminal Procedure cannot be accepted. His mere allegation will not suffice for the purpose and will not force the Court to throw away the complaint of which it had properly taken cognizance on the basis of the allegations in the complaint. Their Lordships further held that to get the benefit of Section 132 Cr.P.C and to put off a clear decision on the question whether his conduct amounts to an offence or not, the accused has to show (i) that there was an unlawful assembly or an assembly of five or more persons likely to cause disturbance of the public peace; (ii) that such an assembly was commanded to disperse; (iii) that either the assembly did not disperse on such command or, if no command had been given, its conduct had shown a determination not to disperse; and (iv) that in the circumstances he had used force against the members of such assembly. Their Lordships have held as under :-

“12. It is clear that when a complaint is made to a criminal court against any police officer and makes allegations indicating that the police officer had acted or purported to act under Ss. 127 and 128 of the Code and in so doing committed some offence complained of, the Court will not entertain the complaint unless it appears that the State Government had sanctioned the prosecution of that police officer. If the allegations in the complaint do not indicate such facts, the Court can have no ground for looking to the sanction of the Government and in the absence of such a sanction for refusing to entertain the complaint. It must proceed with the complaint in the same manner as it would have done in connection with complaints against any

other person.

13. The occasion for the Court to consider whether the complaint could be filed without the sanction of the Government would be when at any later stage of the proceedings it appears to the Court that the action of the police officer complained of appears to come within the provisions of Ss. 127 and 128 of the Act. This can be either when the accused appears before the Court and makes such a suggestion or when evidence or circumstances prima facie show it. The mere suggestion of the accused will not, however be sufficient for the Court to hold that sanction was necessary. The Court can consider the necessity of sanction only when from the evidence recorded in the proceedings or the circumstances of the case it be possible to hold either definitely that the alleged criminal conduct was committed or was probably committed in connection with action under Ss. 127 and 128 of the Code.

14. It is contended for the appellant that if the question of sanction is not decided in the very first instance when a complaint is filed or when the accused alleges that he could not be prosecuted for the alleged offences without the sanction of Government in view of S. 132 of the Code, the protection given by this section will be nugatory as the object of giving this protection is that the police officer be not harassed by any frivolous complaint. There may be some such harassment of the accused, but the Court has no means to hold in the circumstances alleged that

the prosecution of the accused was in connection with such action as the complaint did not disclose the necessary circumstances indicating that fact and the bare word of the accused cannot be accepted to hold otherwise. Just as a complainant is likely to omit mentioning the facts which would necessitate the sanction of Government before he can prosecute the accused, the accused too is likely to make such allegations which may lead to the rejection of the complaint for want of sanction. It is well settled that the jurisdiction of the Court to proceed with the complaint emanates from the allegations made in the complaint and not from what is alleged by the accused or what is finally established in the case as a result of the evidence recorded.

15. *In this connection reference may be appropriately made to the observations of this Court in connection with prosecution to which the provisions of S. 197 of the Code apply. In **Matajog Dobey v. H.C. Bhari, 1955-2 SCR 925 (S): (AIR 1956 SC 44)** in connection with the question "is the need for sanction to be considered as soon as the complaint is lodged and on the allegations therein contained?", it was said at p. 935 : (of SCR) : (at p. 50 of AIR) :*

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the

prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

It follows, therefore, that the contention that a police officer cannot be prosecuted without the sanction from the State Government for an offence which he alleges to have taken place during the course of his performing the duties under Chap. IX of the Code cannot be accepted. His mere allegation will not suffice for the purpose and will not force the Court to throw away the complaint of which it had properly taken cognizance on the basis of the allegations in the complaint.

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17. The next question and the real question to decide then is to determine what the accused has to show in order to get the benefit of the provisions of S. 132 of the Code in the case. To get such a benefit and to put off a clear decision on the question whether his conduct amounts to an offence or not, the appellant has to show (i) that there was an unlawful assembly or an assembly of five or more persons likely to cause a disturbance of the public peace ; (ii) that such an assembly was commanded to disperse ; (iii) that either the assembly did not disperse on such command or, if no command had been given; its conduct had shown a determination not to disperse ; and (iv) that in the circumstances he

had used force against the members of such assembly. He has to establish these facts just in the same manner as an accused has to establish any other exception he pleads in defence of his conduct in a criminal case. It is sufficiently well-settled that it is for the prosecution to prove the offence in the sense that the offence was committed in the circumstances in which no recourse to an exception could be taken and, therefore, if the accused establishes such circumstances which either conclusively establish to the satisfaction of the Court or make the Court believe them to be probable that the case comes within the exception that would be sufficient compliance on the part of the accused with respect to his proving the exception to prove which the onus was on him. In the present case, therefore, the accused has to show to the Court that the alleged offences were committed during the performance of his duties in the circumstances narrated above. On his so showing, it would be the duty of the Court to hold that the complaint could not have been entertained without the sanction of the Government under S. 132 of the Code. To show this is not equivalent to the accused establishing facts which would be necessary for him to take advantage of the provisions of S. 79 of the Indian Penal Code as had been thought in some of the cases cited to us. Section 79, I.P.C. deals with circumstances which when proved makes acts complained of not an offence. The circumstances to be established to get the protection of S. 132,

Criminal P.C. and not circumstances which make the acts complained of no offence, but are circumstances which require the sanction of the Government in the taking of cognizance of a complaint with respect to the offences alleged to have been committed by the accused. If the circumstances to be established for seeking the protection of S. 132 of the Code were to make the alleged conduct no offence, there could be no question of a prosecution with the sanction of the State Government. This distinction had not been considered in the cases we were referred to. It is not necessary to refer to those cases which were ultimately decided on the basis that the allegations either in the complaint or taken together with what had appeared from the evidence on record justified the conclusion that the action complained of came under Ss. 127 and 128 of the Code and that no prosecution in connection with such an action could be instituted in the Court without the sanction of the State Government.”

48. In **Giani Ajmer Singh Vs. Ranjit Singh Grewal, AIR 1965 Punjab 192**, Division Bench held that if the allegations made in the complaint do not attract the protection of Section 197 or Section 132 of the Code of Criminal Procedure, then the Court cannot throw out the complaint for want of sanction merely because the accused, public servant, might possibly successfully establish that he had done the act complained of in the discharge or purported discharge of his official duty. In that case, the complaint against the accused, Superintendent of Police, was that after the

procession taken out as a protest against the irregularities committed in the counting of the votes at a particular constituency had been tear-gassed and dispersed, the accused, in order to justify the wrongful use of the tear gas on the crowd and use of violence, damaged public property and also set fire to property after the procession had been successfully dispersed. This action of the accused, according to the complaint, amounted to offences under Sections 427, 435, 193 and 195 of the Penal Code and therefore did not attract the provisions of S. 197 or 132 of the Code. The Division Bench held as under :-

“10. After citing these authorities, the petitioner's learned counsel has read out the complaint presented by his client and has submitted that on 26-2-1962, the respondent along with a huge armed police party consisting of several police officers and constabulary was present outside the Tehsil premises at Tarn Taran, when the counting of votes of Tarn Taran constituency, from which Shri Gurdial Singh Dhillon, the then speaker of the Punjab Vidhan Sabha, was also a candidate, was going on. The respondent being a close relation of Shri Partap Singh Kairon, had also been present on 25-2-1962 at the time of counting of votes of Sarhali constituency and had been watching the whole situation with anxiety ; he felt very much upset on seeing on 26-2-1962 a procession protesting against the wrongful declaration of Sarhali constituency election result in favour of Shri Kairon the then Punjab Chief Minister. Fearing the adverse effect of such a huge audience on the

mind of the Election Commissioner, the respondent resolved to disperse the peaceful crowd near Tarn Taran Tehsil before the Election Commissioner's arrival. A heavy volume of tear-gas shells were thrown by the police under the respondent's direction and criminal force was also used in dispersing the crowd, and indeed the whole crowd dispersed in consequence of the use of tear-gas shells and criminal force. Master Tara Singh was also carried away under the instructions of the respondent from the gate of Tarn Taran Tehsil. In order to justify the wrongful, improper and uncalled for use of the tear-gas and violence on the crowd, the respondent caused different doors, window panes, etc., of the Tehsil building to be smashed with the help of the police party his control; and some wooden khokhas situated outside the Tehsil which were used as temporary offices by lawyers and petition-writers were also set on fire by the police at the instance of the respondent.

Shri Gurdial Singh Dhillon, the then Speaker of the Punjab Vidhan Sabha, S. Prem Singh Lalpura, M. L. C., Shri Jagjit Singh Lyallpuri member of the Communist Party, Shri Harbhaajan Singh, President Praja Socialist Party and Shri Harbans Singh Gujral Advocate along with some others, according to the complaint, witnessed this incident. Immediate information of the commission of the above mentioned offence by the respondent and his party was sent by Shri Gurdial Singh Dhillon to the Inspector General of Police and to the

Governor of Punjab. According to complaint the respondent had committed offences under Ss. 427/ 435, Indian Penal Code, by setting fire to the wooden khokhas of lawyers and petition-writers and by having caused damage to the Tehsil building by getting broken window-panes and doors in support of his justification. In addition it is alleged, to put plainly, that the respondent committed the acts mentioned therein with the object of fabricating evidence to be used in judicial or other proceeding before a public officer as evidence thereby committing offence under Ss. 193 and 195, Indian Penal Code. It is vehemently contended before us on behalf of the petitioner that the offences against the respondent disclosed in the complaint were not committed by him while acting or purporting to act in the discharge of his official duty and therefore, no sanction either under S. 197 or under S. 132, Criminal Procedure Code, is required. The orders of the learned District Magistrate and the learned Additional Sessions Judge are described to be wrong in law and perverse.

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13. We have considered the arguments at the bar in the light of the allegations contained in complaint.

The principle applicable to the necessity of sanction under Ss. 132 and 197, Cr. P.C. is fairly settled and is scarcely open to any serious doubt ; the difficulty is sometimes confronted only in its application to individual cases. S. 197

has already been set out in the referring order. S. 132 may now be reproduced:

"132 No prosecution against any person for any act purporting to be done under this Chapter shall be instituted in any Criminal Court, except with the sanction of the State Government; and

(a) no Magistrate or police officer acting under this Chapter in good faith,

(b) no officer acting under S.131 in good faith,

(c) no person doing any act in good faith, in compliance with a requisition under S. 128 or S. 130, and

(d) no inferior officer or soldier, sailor or air-man in the armed forces doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier, sailor or airman in the armed forces except with the sanction of the Central Government."

This section, as is clear, is confined to acts purporting to be done under Chapter IX of the Code which means under Ss. 127 to 131. Both these Ss. (132 and 197) are however, couched in quite wide terms, and, broadly put, their purpose obviously is to protect responsible public servants against the institution of possible vexatious and mala fide criminal proceedings for

offences alleged to have been committed by them while they were acting or purporting to act as such in the discharge of their official duty. It is, however, not every offence committed by a public servant which requires sanction under S. 197, nor even every act done by him while he is actually engaged in the performance of the official duty. It is only when the act complained of is directly concerned with his official duty so that if questioned, it could be claimed to have been done by virtue of the office that sanction may be considered necessary, and this would be so irrespective of whether or not it was a proper discharge of his duty because that question can only arise at the trial and not at the initial stage when the Court considers the necessity of sanction.

Some offences cannot by their very nature be regarded as having been committed by public servant while acting or purporting to act in discharge of the official duty: offences like acceptance of bribe or cheating being some of them. To fall within the purview of the protection afforded by S. 197, the act must bear such reasonable connection with the discharge of the official duty that the public servant charged could by a reasonable but not a pretended or fanciful justification claim that he did the act in the course of the performance of his duty. Since the question of the necessity of sanction has to be decided judicially by the Court it has to proceed on the material properly and lawfully placed before it by applying its judicial mind. If the

allegations made in the complaint do not attract the protection of S. 197 or S. 132 Cr.P.C., then the Court cannot throw out the complaint for want of sanction merely because the accused-public servant might possibly successfully establish that he had done the act complained of in the discharge or purported discharge of his official duty.

Of course, if and when the Court finds, before it material justifying the necessity of sanction, it would be its duty to stay its hands and look for the requisite sanction. In anticipation of the bare possibility of such material being placed before it by the accused, the Court cannot legitimately decline to entertain and proceed to deal with the complaint in accordance with law on the ground that absence of prior sanction under S. 197 prohibits it from doing so, vide AIR 1960 SC 266, where entire case law is reviewed: AIR 1960 SC. 745 and Amrik Singh's case (S) AIR 1955 SC 309.

Similarly if the allegations in the complaint do not attract the provisions of S. 132, the Court can have no ground for looking for the sanction and in its absence for refusing to entertain the complaint. The ratio of Nagraj's case AIR 1964 SC 269, would apply both to S. 132 and S. 197 which are sister provisions having identical object in view.

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15. Coming to the complaint in the case in hand, the purport of which has been stated earlier, the allegations contained therein, plainly and

reasonable read as a whole, do not show or even suggest that the offence alleged to have been committed by the respondent was committed while he was acting or purporting to act in the discharge of his official duty; nor do they show or suggest that the respondent committed the act alleged against him when he was purporting to act under Chapter IX, Cr. P. C. Indeed, when pressed, even the learned Assistant Advocate General had merely to fall back on the contention that if it can be visualised that the respondent may be able at the trial to urge in defence, when called upon to do so, that he had committed the act alleged while performing his duty, then the Court should look for the requisite sanction. With this extreme contention, we are unable to agree, and needless to say that the various authoritative precedents do not support it.

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18. The order dated the 16th May, 1962 of the learned Second Additional Sessions Judge, Shri Banwari Lal, on revision is undoubtedly more detailed, before whom the Public Prosecutor appearing for the State opposed the revision. The learned Judge appears to have initially stated the principle of law correctly but he seems to have completely ignored the averments in the complaint before him and has contrary to those allegations observed that the acts complained of were directly connected with the official duties of the respondent. It may be pointed out that the learned Judge on revision has relied both on S. 132 and S. 197 for ousting the Court's

jurisdiction. At one stage, however, he has, in his judgment, observed that when it is reasonably open to the accused public servant to urge in his defence the plea that he had committed the acts alleged while acting or purporting to act in the discharge of his official duties then the Court is required to stay its hand. This view may not, in the face of the authorities, discussed earlier, be completely supportable, for, at the initial stage, the Court cannot imagine the possible defence of the accused which it would be open to him to substantiate. Besides, the acts complained of in the case in hand can prima facie and on the existing material hardly be judicially found to fall within the respondent's official duties, an aspect completely ignored by the Court below. The learned Additional Sessions Judge has also referred to S. 195, Criminal Procedure Code as a bar in respect of the part of the allegations in the complaint but before us the respondent's counsel has not relied on this section. The impugned order of the learned Additional Sessions Judge thus appears to us to be based on a complete misreading - if not in utter disregard or ignorance - of the allegations in the complaint and is therefore liable to be set aside. Cases like the present call for a judicious and conscientious approach by the Courts of law and justice which have to strike a proper balance between the protection of the public servants against frivolous and vexatious prosecution and the protection of the public against high-handed, mala fide and unlawful acts on the part of these entrusted with

power which can only be exercised within the limits provided by the law conferring it. Needless to state that this test would also seem to govern the administrative approach to cases like the present if the citizens are not to lose faith in the sense of justice in our set-up.”

49. In **Hanuman Singh and others Vs. State, AIR 1969 Allahabad 130**, the learned Single Judge held that the question whether the assembly which was initially a lawful assembly subsequently converted into an unlawful assembly, is a matter of inference deducible from the conduct of the persons composing the assembly. The conduct which may lead to the inference must, however, be of a clear and unequivocal nature and the inference must be irresistible. The learned Single Judge further held that under Section 127 Cr.P.C., the power to command an assembly to disperse has been conferred only upon a Magistrate or officer in charge of a police station. The learned Single Judge held as under :-

“11. Undoubtedly, every person has a right to arm himself for protection and to prepare himself beforehand for repelling a possible attack on himself or any other person. If he anticipates danger to his own body or to that of any other person in the course of a lawful activity the law does not compel or require him to abstain from that activity so that he may not be called upon to use force. He has a right to keep himself armed for averting the danger and he is not deprived of that right merely because his preparedness may itself, in some cases, have the effect of enhancing the danger. It must, therefore, be held that the persons assembled at the meeting of the Congress

party did not become members of an unlawful assembly by reason of the fact that some persons of the assembly carried weapons including firearms.

12. It is also obvious that an assembly of five or more persons acquires the character of an unlawful assembly only when the common object of the persons composing that assembly is one or more of the things enumerated in the five clauses of Section 141 I.P.C. Going to or participating in a public meeting with arms is certainly not a desirable thing to do, but undesirability is not criminality, and so however improper the behaviour of an assembly may be it cannot be designated an unlawful assembly unless it has a common object falling within one of the clauses of the aforesaid section. In the instant case it is not possible to hold that the persons assembled, in the meeting of the Congress party had any such common object.

*13. It may be that the manner in which the people in the meeting of the Congress party behaved tended to provoke the other party and was thus fraught with the danger of exciting it into violence, but that cannot be a reason for holding that they had formed an unlawful assembly by reason of the unlawfulness of its object and not because of its having a tendency to inflame the passions of others and to rouse them to indulge in an unlawful activity. I may draw attention here to **In re Mukka Muthrian, 31 Ind Cas 343 = (AIR 1916 Mad 1062 (2))** where a learned Judge of the Madras High Court observed that an assembly*

lawful in itself does not become unlawful merely by reason of its lawful acts exciting others to do unlawful acts.

14. I have dealt above with the circumstances from which the learned Sessions Judge derived the conclusion that the participants in the meeting of the Congress party were members of an unlawful assembly from the beginning, and it seems obvious that these circumstances, neither individually nor cumulatively, justify the conclusion. It is true that common object has to be a matter of inference, but for establishing that an unlawful assembly had been formed the prosecution has to show not merely that it was likely that the assembly in question had for its object one or more of the things specified in Section 141 I.P.C. but that the existence of such object or objects is the only reasonable conclusion possible in the circumstances of the case. The circumstances of the present case, far from being of such a conclusive nature, do not even make it probable that the assembly at the Congress meeting was formed with any such common object as could have made it an unlawful assembly.

15. What has next to be seen is whether the assembly which was initially a lawful assembly became subsequently converted into an unlawful assembly. That this could happen cannot be disputed, but the question is whether it did happen. No doubt, this again is a matter of inference deducible from the conduct of the persons composing the assembly. The conduct

which may lead to the inference must, however, be of a clear and unequivocal nature and the inference must be irresistible. If the conduct of the assembly is consistent with its having remained a lawful assembly and a reasonable possibility of its having retained its original lawful character is not excluded, it is not possible to hold that the assembly changed into an unlawful assembly. I may now proceed to examine in this light the conduct of the assembly apart from the speech delivered there and the slogans shouted.

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21. Before passing on to another aspect of the case I must refer to the statement of Mukhtar Ali S.I. to the effect that when lathi fight between the two parties began he declared that the two assemblies had become unlawful and they should disperse. If what Mukhtar Ali said is construed as an expression, at the spot, of Mukhtar Ali's opinion as to the legal character of the two assemblies and an effort on his part to disperse them nothing need be said about it. If, however, it is suggested that it had itself the effect of making the assemblies unlawful or that upon the failure of the members of the assemblies to disperse after having been commanded to do so, they automatically became members of unlawful assemblies the suggestion has to be repelled. The statutory provision relating to dispersal of assemblies is contained in Section 127 Cr.P.C. which runs as follows:

"(1) Any Magistrate or officer in

charge of a police station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies also to the police in the town of Calcutta."

*It is obvious that the power to command an assembly to disperse has been conferred only upon a Magistrate or officer in charge of a police station, and Mukhtar Ali was, therefore, incompetent to act under the above provision. Further, the failure of an assembly of persons to disperse or even its refusal to do so has the effect of calling into play the provisions of Section 128 Cr.P.C. and of empowering a Magistrate or an officer in charge of a police station to proceed under that section, but it does not result in the conversion of a lawful assembly into an unlawful assembly. The unlawful character of the assembly has to be determined with reference to Section 141 I.P.C. alone and the disobedience of a command issued under Section 127 Cr.P.C. is not a relevant consideration for that purpose. Reference in this connection may be made to **Girdhara Singh v. Emperor, 64 Ind Cas 373 = (AIR 1922 Lah 135).**"*

50. In **Bhagwan Prasad Srivastava Vs. N.P. Mishra, 1970 (2) Supreme Court Cases 56,** their Lordships of the Supreme Court have explained the relation between "the act" and "discharge of official duty"

under Section 197 Cr.P.C., as under :-

“4. The object and purpose underlying this section is to afford protection to public servants against frivolous, vexatious or false prosecution for offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duty. The larger interest of efficiency of State administration demands that public servants should be free to perform their official duty fearlessly and undeterred by apprehension of their possible prosecution at the instance of private parties to whom annoyance or injury may have been caused by their legitimate acts done in the discharge of their official duty. This section is designed to facilitate effective and unhampered performance of their official duty by public servants by providing for scrutiny into the allegations of commission of offence by them by their superior authorities and prior sanction for their prosecution as a condition precedent to the cognizance of the cases against them by the courts. It is neither to be too narrowly construed nor too widely. Too narrow and pedantic construction may render it otiose for it is no part of an official duty - and never can be - to commit an offence. In our view, it is not the "duty" which requires examination so much as the "act" because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. One must also guard against too wide a construction because in our Constitutional set up the idea of legal equality or of universal

*subjection of all citizens to one law administered by the ordinary courts has been pushed to its utmost limits by enshrining equality before the law in our fundamental principles. Broadly speaking, with us no man, whatever his rank or condition is above the law and every official from the highest down to the lowest is under the same responsibility for every act done without legal justification as any other citizen. In construing Section 197, Cr.P.C., therefore, a line has to be drawn between the narrow inner circle of strict official duties and acts outside the scope of official duties. According to the decision of this Court in **Matajog Dobey v. H.C. Bhari, (1955) 2 SCR 925**, cited by Shri Sarjoo Prasad on behalf of the appellant there must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In **Amrik Singh v. The State of Pepsu, (1955) 1 SCR 1302 at 1307**, this Court said :*

"It is not every offence committed by a public servant that requires sanction for prosecution under Section 197 (1) of the Code of Criminal Procedure; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then

sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be investigated at the trial, and could not arise at the stage of the grant of sanction, which must precede the institution of the prosecution."

Recently in ***Bajnath Gupta Vs. State of M.P., (1966) 1 SCR 2010***, this Court further explained that it is the quality of the act that is important and if it falls within the scope and range of the official duties of the public servant concerned the protection contemplated by Section 197 of the Criminal Procedure Code will be attracted.

5. The principle embodied in this section seems to be well-understood; the difficulty normally lies is in its application to the facts of a given case. The question whether a particular act is done by a public servant in the discharge of his official duty is substantially one of fact to be determined on the circumstances of each case. In the present case the alleged offence consists of the use of defamatory and abusive words and of getting the complainant forcibly turned out of the operation theatre by the Cook. There is nothing on the record to show that this was a part of the official duty of the appellant as Civil Surgeon or that it was so directly connected with the performance of his official duty that without so acting he could not have properly discharged it."

Ahmedabad and another, (1973) 1 Supreme Court Cases 227, their Lordships of the Supreme Court have held in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Their Lordships further held that the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order. The right of citizens to take out processions or to hold public meetings flows from the right in Article 19 (1) (b) of the Constitution of India to assembly peaceably and without arms and the right to move any where in the territory of India. Their Lordships also held that freedom of assembly is an essential element of any democratic system. Their Lordships have held as under :-

“31. It seems to us that it follows from the above discussion that in India a citizen had, before the Constitution, a right to hold meetings on public streets subject to the control of the appropriate authority regarding the time and place of the meeting and subject to considerations of public order. Therefore, we are unable to hold that the impugned rules are ultra vires Section 33 (1) of the Bombay Police Act insofar as they require prior permission for holding meetings.

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33. This is true but nevertheless the State cannot by law abridge or take away the right of assembly by prohibiting assembly on every public street or public place. The State can only make

regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order.

34. This Court in ***Babulal Parate v. State of Maharashtra***, AIR 1961 SC 884 rightly observed:

"The right of citizens to take out processions or to hold public meetings flows from the right in Article 19 (1) (b) to assemble peaceably and without arms and the right to move anywhere in the territory of India."

35. If the right to hold public meetings flows from Article 19 (1) (b) and Article 19 (1) (d) it is obvious that the State cannot impose unreasonable restrictions. It must be kept in mind that Article 19 (1) (b), read with Article 13, protects citizens against State action. It has nothing to do with the right to assemble on private streets or property without the consent of the owners or occupiers of the private property.

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70. Public meeting in open spaces and public streets forms part of the tradition of our national life. In the pre- Independence days such meetings have been held in open spaces and public streets and the people have come to regard it as a part of their privileges and immunities. The State and the local authority have a virtual monopoly of every open space at which an outdoor meeting can be held. If, therefore., the State or Municipality can constitutionally close both its streets and its parks entirely to public meetings,

the practical result would be that it would be impossible to hold any open air meetings in any large city. The real problem is that of reconciling the city's function of providing for the exigencies of traffic in its streets and for the recreation of the public in its parks' with its other obligations, of providing adequate places for public discussion in order to safeguard the guaranteed right of public Assembly. The assumption made by Justice Holmes is that a city owns its parks and highways in the same sense and with the same rights a private owner owns his property with the right to exclude or admit anyone he pleases. That may not accord with the concept of dedication of public streets and parks. The parks are held for public and the public streets are also held for the public. It is doubtless true that the State or local authority can regulate its property in order to serve its public purposes. Streets and public parks exist primarily for other purposes and the social interest promoted by untrammelled exercise of freedom of utterance and assembly in public street must yield to social interest which prohibition and regulation of speech are designed to protect. But there is a constitutional difference between reasonable regulation and arbitrary exclusion.

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84. It is true that there is a well recognised right of taking out processions on public thoroughfares in this country as an incident of the well understood right of their user by the public. But, I find it very difficult to proceed

further and to hold that such a right could be extended and converted into a right to hold a public meeting on a thoroughfares The right to hold a public meeting may be linked with or even flow out of rights under Article 19 (1) (a) to express one's opinions and 19(1)(b) to assemble peaceably and without arms, just as the right to take out processions or moving assemblies may spring from or be inextricably connected with these rights, yet, inasmuch as the right to hold a meeting at a particular place must rest on the proof of user of that place for the exercise of a fundamental right, it appears to me that the right to such a user must be established in each particular case quite apart from or independently of fundamental rights guaranteed by Article 19 (1) of our Constitution. It involves something more than the exercise of a fundamental right although that something more may be necessary for and connected with the exercise of a fundamental right.”

52. Their Lordships of the Supreme Court in **P.P. Unnikrishnan and another Vs. Puttiyottil Alikutty and another, (2000) 8 Supreme Court Cases 131**, have explained the distinction between expressions offence committed by a police officer “on account of any act done in pursuance of any duty” in Section 64 (3) of the Kerala Police Act, 1960 and “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty” in Section 197 (1) Cr.P.C. Their Lordships have held that a policeman keeping a person in the lock-up for

more than 24 hours without authority and subjecting to third-degree treatment, was neither covered by Section 64 (3) of the Kerala Police Act nor by Section 197 (1) Cr.P.C. Their Lordships held as under :-

“16. Ms. M. Jayshree, learned counsel for the appellants contended that Section 64 (3) of the K.P. Act contains words which are analogous to the words employed in Section 197 (1) of the Code and on that premise learned counsel requested us to follow certain decisions for understanding the scope of the sub-section concerned in the K.P. Act. Even assuming that the words employed in those two different sub-sections (one in the K.P. Act and the other in the Code) are the same it has to be pointed out that the context envisaged in Section 197 (1) of the Code or the purpose of providing a filter therein is demonstrably different from the object of Section 64 (3) of the K.P. Act. Section 197 (1) of the Code does not impose any absolute ban against taking cognizance of the offence, but it only says that the sanction contemplated therein is a condition precedent for taking such cognizance. It obviously is for preventing public servants from being subjected to frivolous prosecutions for discharging their official duties. On the other hand, Section 64 (3) of the K.P. Act incorporates an absolute ban against taking cognizance of the offences of the type mentioned therein on the expiry of the period specified therein.

17. *That apart the words used in Section 197 (1) of the Code for qualifying the offence are seemingly wider. Those words are these: “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. In Section 64 (3) of the K.P. Act the offence is qualified as the offence committed by a police officer*

“on account of any act done in pursuance of any duty imposed or authority conferred on him by this Act or any other law for the time being in force or any rule, order of direction lawfully made or given thereunder.”

18. *The commission of an offence, while acting or purporting to act in the discharge of his official duty is of a wider radius when compared with an offence committed on account of an act done in pursuance of any duty or authority. In the latter, the act done itself should be an exercise in discharge of his duty or authority and that act should amount to an offence. It is not enough that the act complained of was only purported to be in exercise of his duty though it may be sufficient under the former. So the scope under Section 64 (3) of the K.P. Act is much narrower than the amplitude of Section 197 (1) of the Code for a public servant to claim protection.*

19. *Even under Section 197 of the Code no protection has been granted to public servants*

*for the type of acts alleged in the case against the appellants. Decisions are a legion relating to the scope of the protection under Section 197 (1) of the Code. In **Matajog Dobey vs. H.C. Bhari** {1955 (2) SCR 925} this Court made a slight deviation from the view adopted by the Judicial Committee of the Privy Council in **H.H.B. Gill v. R., AIR 1948 PC 128**. This Court after referring to earlier decisions summed up the scope of Section 197 (1) of the Code thus:*

“There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”

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21. *If a police officer dealing with law and order duty uses force against unruly persons, either in his own defence or in defence of others and exceeds such right it may amount to an offence. But such offence might fall within the amplitude of Section 197 of the Code as well as Section 64 (3) of the K.P. Act. But if a police officer assaults a prisoner inside a lock-up he cannot claim such act to be connected with the discharge of his authority or exercise of his duty unless he establishes that he did such acts in his*

defence or in defence of others or any property. Similarly, if a police officer wrongfully confines a person in the lock-up beyond a period of 24 hours without the sanction of a Magistrate or an order of a court it would be an offence for which he cannot claim any protection in the normal course, nor can he claim that such act was done in exercise of his official duty. A policeman keeping a person in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority.”

53. In **Abdul Wahab Ansari Vs. State of Bihar and another, AIR 2000 Supreme Court 3187**, their Lordships of the Supreme Court have held that when the appellant directed opening of fire to control mob, two persons got injured and one person died. The order for opening of fire was in exercise of official duty imposed under orders of Magistrate. Their Lordships have held as under :-

*“7. Coming to the second question, it is now well settled by the Constitution Bench decision of this Court in **Matajog Dobey vs. H.C. Bhari, (1955) 2 SCR 925** that in the matter of grant of sanction under Section 197 of the Code of Criminal Procedure the offence alleged to have been committed by the accused must have something to do, or must be related in some manner, with the discharge of official duty. In other words, there must be a reasonable connection between the act and the discharge of*

*official duty; the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty. In the said case it had been further held that where a power is conferred or a duty imposed by statute or otherwise, and there is nothing said expressly inhibiting the exercise of the power or the performance of the duty by any limitations or restrictions, it is reasonable to hold that it carries with it the power of doing all such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a thing to be done, it authorises the performance of whatever may be necessary for executing its command. This decision was followed by this Court in **Suresh Kumar Bhikamchand Jains** case, 1998 (1) SCC 205 : and in a recent judgment of this Court in the case of **Gauri Shankar Prasad vs. State of Bihar**, 2000 (5) SCC 15. The aforesaid case has full force even to the facts of the present case inasmuch as in the said case, the Court had observed:*

“It is manifest that the appellant was present at the place of occurrence in his official capacity as Sub Divisional Magistrate for the purpose of removal of encroachment from government land and in exercise of such duty, he is alleged to have committed the acts which from the gravamen of the allegations contained in

the complaint lodged by the respondent. In such circumstances, it cannot but be held that the acts complained of by the respondent against the appellant have a reasonable nexus with the official duty of the appellant. It follows, therefore, that the appellant is entitled to the immunity from criminal proceedings without sanction provided under Section 197 Cr.P.C.”

It is not necessary for us to multiply authorities on this point and bearing in mind the ratio of the aforesaid cases and applying the same to the facts of the present case as indicated in the complaint itself, we have no hesitation to come to the conclusion that the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197 (1) applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the appellant, it will be an abuse of the process of Court. Accordingly, we allow this appeal and quash the criminal proceeding, so far as the appellant is concerned.”

54. In the instant case, no order for opening fire to control the mob was issued by PW.14 Megh Raj. Thus, firing at the mob by the appellants was not in discharge of official duties.

55. In **P.K. Pradhan Vs. State of Sikkim, (2001) 6 Supreme Court Cases 704**, their Lordships of the Supreme Court have explained the concept of offence committed “while acting or purporting to act in the discharge of his official duty” under Section 197 (1) of the Cr.P.C., as under :-

“5. *The legislative mandate engrafted in sub section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. The offence alleged to have been committed must have something to do, or must be*

related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of situation.

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15. *Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status*

furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

56. Their Lordships of the Supreme Court in **State of H.P. Vs. M.P. Gupta, (2004) 2 Supreme Court Cases 349** have explained the object of Section 197 Cr.P.C. and its applicability as under :-

“8. The protection given under Section 197 is to protect responsible public servants

against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires

examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty; if the answer to his question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case.

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11. Such being the nature of the provision, the question is how should the expression, “any offence alleged to have been committed by him while acting or purporting to

*act in the discharge of his official duty”, be understood? What does it mean? “Official” according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In **B. Saha and Ors. v. M. S. Kochar (1979) 4 SCC 177** it was held : (SCC pp. 184-85, para 17)*

"17. The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197 (1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, 'it is no part of an official duty to commit an offence, and never can be'. In the wider sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197 (1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction

for prosecution and the said provision."

Use of the expression, 'official duty' implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus, to be construed strictly, while determining its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance, a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted

*manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance, a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty then the bar under Section 197 of the Code is not attracted. To what extent an act or omission performed by a public servant in discharge of his duty can be deemed to be official was explained by this Court in **Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44)** thus (AIR p. 49, paras 17 & 19) :*

"The offence alleged to have been committed (by the accused) must have something to do, or must be related in some manner with the discharge of official duty ... There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable (claim), but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

13. *If, on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection*

with discharge of his duty then it must be held to be official to which applicability of Section 197 of the Code cannot be disputed.”

57. In **Choudhury Parveen Sultana Vs. State of West Bengal and another, (2009) 3 Supreme Court Cases 398**, their Lordships have held that for applying bar of Section 197 Cr.P.C., each case has to be considered in its own fact situation in order to arrive at a finding as to whether protection of Section 197 could be given to the public servant. Their Lordships have held as under :-

*“18. The direction which had been given by this Court, as far back as in 1971 in **Bhagwan Prasad Prasad Srivastava’s case (1970) 2 SCC 56** holds good even today. All acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 Cr.P.C. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him. As mentioned in **Bhagwan Prasad Srivastava’s case**, the underlying object of Section 197 Cr.P.C is to enable the authorities to scrutinize the allegations made against a public servant to shield him/her against frivolous, vexatious or false prosecution initiated with the main object of causing embarrassment and harassment to the said official. However, as indicated hereinabove, if the authority vested in a public servant is misused for doing things which are not otherwise permitted under the law, such*

acts cannot claim the protection of Section 197 Cr.P.C. and have to be considered de hors the duties which a public servant is required to discharge or perform. Hence, in respect of prosecution for such excesses or misuse of authority, no protection can be demanded by the public servant concerned.

19. In the instant case, certain deeds and acts have been attributed to respondent No.2 and another accused, which cannot be said to have been part of the official duties to be performed by respondent No.2. Hence, in our view, the respondent No.2 was not entitled to the protection of Section 197 Cr.P.C. in respect of such acts.

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21. We have already indicated that we are unable to accept such a view. In our view, the offences complained of cannot be said to part of the duties of the Investigating Officer while investigating an offence alleged to have been committed. It was no part of his duties to threaten the complainant or her husband to withdraw the complaint. In order to apply the bar of Section 197 Cr.P.C. each case has to be considered in its own fact situation in order to arrive at a finding as to whether the protection of Section 197 Cr.P.C. could be given to the public servant. The fact situation in the complaint in this case is such that it does not bring the case within the ambit of Section 197 and the High Court erred in quashing the same as far as the respondent No.2 is concerned. The complaint prima facie makes out offences alleged to have been committed by the

respondent No.2 which were not part of his official duties.

22. We, accordingly, allow the appeal and set aside the judgment and order of the High Court. The trial Court shall proceed with the trial of all the accused, including the respondent No.2 herein.”

58. In **State of U.P. Vs. Paras Nath Singh, 2009 Criminal Law Journal 3069**, their Lordships of the Supreme Court have again reiterated the meaning of term “official duty”. Their Lordships have held that Section 197 Cr.P.C. does not extend its protective cover to every act or omission done by a public servant in service. It restricts its scope of operation to only official duty. Their Lordships have held as under :-

“6. Use of the expression, ‘official duty’ implies that the act or omission must have been done by the public in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or mission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

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8. If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then the act must be held as official to which applicability of Section 197 of the Code cannot be disputed.”

59. According to Section 129 Cr.P.C., any Executive Magistrate or

officer-in-charge of a police station or, in the absence of such officer-in-charge, any police officer, not below the rank of a sub-inspector, may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly. In case, such assembly does not disperse and it conducts in such a manner as to show a determination not to disperse, any Executive Magistrate or police officer may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or member of the armed forces and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly. The degree of force lawfully usable depends on the nature of the assembly. It should also be proportionate to the circumstances. Killing can only be justified by the necessity for protecting persons or property against various forms of violence and if the members of assembly become riotous.

60. In the instant case, negotiations between Mill management and the workmen was to be carried out by the officials of the Labour department and not by the police officers. The police has used disproportionate force. It was required to declare the assembly as an unlawful assembly. Thereafter, members of the assembly could be commanded to disperse. Thereafter, the police could resort to detain or confine the members of the assembly. Water canons and tear gas shells could be used to disperse the assembly. If members of the assembly did not disperse, lathi charge, pepper spray, plastic bullets and firing in air was to be resorted to. The firing is to be

resorted to only as a last resort, that too by targeting lower parts of body of members of the assembly. Firing should be resorted to when there is reasonable threat, that too to protect the police officers themselves and other persons from death or serious injuries. PW.2 Ram Avtar has specifically deposed that the Naib Tehsildar did not apprise the workers that provision of Section 144 Cr.P.C. was in force. He denied the suggestion that the workmen were lathi charged. In the instant case, the police had fired indiscriminately hitting the victims all over their bodies. Narinderpal Singh was not the in-charge of police station at the time of firing. PW.13 Harbhaj Ram deposed that he was posted as SHO Police Station City Abohar at that time. Thus, benefit of Section 132 Cr.P.C. as well as Section 197 Cr.P.C. was not available to Narinderpal Singh and other police officials.

61. Learned counsel appearing on behalf of the appellants also argued that the appellants had fired in self defence. We do not find any substance in this submission. The fact of the matter is that the workmen were unarmed. The appellants have used excessive force, more than what was required at the spot. The force used must be proportionate to the threat.

62. In the present case, eight persons have died in the police firing. Police resorted to firing on the protesting labourers without authority of law. The firing made on unlawful assembly was unprovoked. The families of the victims are required to be compensated for the illegal act of the police personnel. The labourers, namely Maan Singh, Ram Gopal, Basant, Data Ram, Shri Krishan and Jai Ram, who died in the firing, were aged about 30 years, 26 years, 40 years, 24-25 years, 40 years and 35-40 years. One of the boys died in the firing was aged 11 years and other boy was 18 years of age.

Their families are also required to be compensated. The injured – workmen, who suffered injuries in the incident, are also required to be compensated by taking into consideration their disablement suffered due to police excesses.

63. The House of Lords in **Rookes Vs. Barnard, 1964 (1) All England Law Reports 367** have held that English Law recognized the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages); and there were two categories of cases in which an award of exemplary damages could serve a useful purpose, viz., in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, and in the case where the defendant's conduct had been calculated by him to make a profit for himself, which might well exceed the compensation payable to the plaintiff. Their Lordships have held as under:

“In my opinion, therefore, the appeal should succeed and the judgment of SACHS, J. (129) on liability should be restored. Counsel for the respondents has submitted that it ought not be restored in its entirety. He asks for a new trial on damages on the ground that the learned judge misdirected the jury on this issue. The cardinal feature of the summing-up on this part of the case was a direction to the jury that they might (counsel for the respondents submits that it amounted almost to “must”) award exemplary damages and your lordships have therefore listened to a very penetrating discussion about the nature of exemplary damages and the circumstances in which

an award is appropriate. The Court of Appeal, having found for the respondents on liability, did not consider this issue, so your lordships must begin at the beginning. Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. It may well be thought that this confuses the civil and criminal functions of the law; and indeed, so far as I know, the idea of exemplary damages is peculiar to English law. There is not any decision of this House approving an award of exemplary damages and your lordships therefore have to consider whether it is open to the House to remove an anomaly from the law of England.

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*In **Benson V. Frederick (136)** the plaintiff a common soldier, obtained damages of pound 150 against his colonel who had ordered him to be flogged so as to vex a fellow officer. LORD MANSFIELD, C.J., said (137) that the damages “were very great, and beyond the proportion of what the man had suffered”. But the sum awarded was upheld as damages in respect of an arbitrary and unjustifiable action and not more than the defendant was able to pay. These authorities clearly justified the use of the exemplary principle; and for my part I should not wish, even if I felt at liberty to do so, to diminish its use in this type of case where it serves a valuable purpose in restraining the arbitrary and outrageous use of executive power.*

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My lords, I express no view on whether the Copyright Act, 1956, authorizes an award of exemplary, as distinct from aggravated damages. But there are certainly two other Acts of Parliament which mention exemplary damages by name. The Law Reform (Miscellaneous Provisions) Act, 1934, S. 1(2)(a), provides that where a cause of action survives for the benefit of the estate of a deceased person, the damages recoverable shall not include any exemplary damages. The Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1953, s. 13(2), provides that in any action for damages for conversion in respect of goods falling within the statute the court may take into account the defendant's conduct and award exemplary damages. These authorities convince me of two things. First, that your lordships could not without a complete disregard of precedent, and indeed of statute, now arrive at a determination that refused altogether to recognize the exemplary principle. Secondly, that there are certain categories of cases in which an award of exemplary damages can serve a useful purpose in vindicating the strength of the law, and thus affording a practical justification for admitting into the civil law a principle which ought logically to belong to the criminal. I propose to state what these two categories are; and I propose also to state three general considerations which, in my opinion, should always be borne in mind when awards of exemplary damages are being made. I am well

aware that what I am about to say will, if accepted, impose limits not hitherto expressed on such awards and that there is powerful, though not compelling, authority for allowing them a wider range. I shall not therefore conclude what I have to say on the general principles of law without returning to the authorities and making it clear to what extent I have rejected the guidance which they may be said to afford.

The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category, -I say this with particular reference to the facts of this case, - to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and very likely the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not in my opinion punishable by damages. Case in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well

*exceed the compensation payable to the plaintiff. I have quoted the dictum of ERLE, C.J., in **Bell V. Midland Ry. Co.**, MAULE, J., in **Williams V. Currie**, suggests the same thing; and so does MARTIN, B., in an obiter dictum in **Crouch V. Great Northern Ry. Co.** It is a factor also that is taken into account in damages for libel; one man should not be allowed to sell another man's reputation for profit. Where a defendant with a cynical disregard for a plaintiff's rights has calculated that the money to be made out of his wrongdoing will probably exceed the damages at risk, it is necessary for the law to show that it cannot be broken with impunity. This category is not confined to moneymaking in the strict sense. It extends to cases in which the defendant is seeking to gain at the expense of the plaintiff some object, -perhaps some property which he covets,-which either he could not obtain at all or not obtain except at a price greater than he wants to put down. Exemplary damages can properly be awarded whenever it is necessary to teach a wrongdoer that tort does not pay. To these two categories, which are established as part of the common law, there must of course be added any category in which exemplary damages are expressly authorized by statute."*

64. Their Lordships of the Supreme Court in **Dagdu and others Vs. State of Maharashtra (1977) 3 Supreme Court Cases 68** have held that the police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. Their Lordships have held as under:

“88. It is plain commonsense that suspects are seldom willing to furnish a quick and correct clue to the crimes for which they are arrested. A certain amount of coaxing and promising has inevitably to be done in order to persuade the accused to disclose at least the outlines of the crime. But the use of strong methods of investigation, apart from raising problems concerning the observance of decency in public affairs and of human dignity, is fraught with the danger that the very process by which evidence is collected may become suspect and fail to inspire confidence. Ganpat, the approver, was driven to admit that he was tortured while in the lock-up and we have serious doubts whether the injury caused on his head was, as alleged by the police, self-inflicted. A witness called Ramchandra also admitted that while under interrogation the police pulled out his pig-tail. We have resisted the failing which tempts even judicially trained minds to revolt against such methods and throw the entire case out of hand. But we must, with hopes for the future, utter a word of warning that just as crime does not pay, so shall it not pay to resort to torture of suspects and witnesses during the course of investigation. History shows that misuse of authority is a common human failing and, therefore, Courts must guard against all excesses. The police, with their wide powers, are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That tendency and that temptation must, in the

larger interests of justice, be nipped in the bud.

Goswami, J.:- 88. I am in agreement with the judgment proposed by my brother Chandrachud which is a piece of conspicuous clarity after marshalling and compressing a mass of evidence. I also agree with the views expressed therein on the legal questions raised in these appeals. Even so I feel obliged to add a few lines.”

65. The Apex Court in **Raghubir Singh Vs. State of Haryana, AIR 1980 Supreme Court 1087** has held that the State, at the highest administrative and political levels, must organize special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-à-vis the people of the country will deteriorate. Their Lordships have also held that the vulnerability of human rights assumes a traumatic, torturesome poignancy; the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not commit gruesome offences against them. Their Lordships have held as under:

“2. We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torture some poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome offences against them as has happened in this case. Police

lock-up if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.

3. The State, at the highest administrative and political levels, we hope, will organise special strategies to prevent and punish brutality by police methodology. Otherwise, the credibility of the rule of law in our Republic vis-a-vis the people of the country will deteriorate."

66. Their Lordships of the Supreme Court again in **Kishor Singh Ravinder Dev etc. Vs. State of Rajasthan, AIR 1981 Supreme Court 625** have held that nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights. Their Lordships have held as under:

"5. Thereafter, the medical report, of which we have been apprised by Shri Parekh, the report against the constables concerned, reported to us by Shri Sharma, are taking their course. We do not make any observations thereon as that is the subject of a separate enquiry. Even so, no police life-style which relies more on fists than on wits, on torture more than on culture can control crime because means boomerang on ends and re-fuel the vice which it seeks to extinguish. Secondly, the State must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person-a process which must begin more by example than

by precept if the lower rungs are really to emulate. Thirdly, if any of these escort policemen are found to have misconducted themselves, no sense of police solidarity or in-service comity should induce the authorities to hide the crime. Condign action, quickly taken is surer guarantee of community credence than bruited about that 'all is well with the police, the critics are always in the wrong, Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights. We believe the basic pathology which makes police cruelty possible will receive Government's serious attention. Who will police the police? What psychic stress and social deprivation of the constabulary's life-style need corrective healing? When will 'wits, not fists' become a police kit? When will the roots of 'third degree' be plucked out and the fresh shoots of humanist respect put out? We make these observations in the humane hope that Art. 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article."

67. Their Lordships of the Supreme Court in **Bhim Singh, MLA Vs. State of J & K and others (1985) 4 Supreme Court Cases 677** have held that police officers should have greatest regard for personal liberty of citizens. Their Lordships have condemned the mala fide, high-handed and authoritarian conduct in depriving the personal liberty of a person. Their

lordships have held as under:

“2. From the affidavits filed by the several police officers, it transpires that an FIR under S. 153A of the Ranbir Penal Code was registered against Shri Bhim Singh on Sept. 9, 1985 at Police Station, Pacca Danga, Jammu on the allegation that he had delivered an inflammatory speech at a public meeting held near Parade Ground, Jammu at 7.00 P. M. on Sept. 8, 1985. The Officer-in-charge of Police Station, Pacca Danga brought the matter to the notice of the Senior Superintendent of Police, Jammu, who in turn informed the Deputy Inspector General of Police of Jammu range. On 10th Sept., 1985, requisition for the arrest of Shri Bhim Singh was sent to the Superintendent of Police, Anantnag through the Police Control Room, Srinagar. This fact is sworn to by Shri M. M. Khajuria, Inspector General of Police, Jammu & Kashmir. Shri M. A. Mir, Superintendent of Police, Anantnag has, however, stated in his affidavit that on Sept. 9, 1985 at about 11.30 P.M. he was informed by the Police Control Room Srinagar that Shri Bhim Singh, MLA was required to be apprehended as he was wanted in a case registered under S. 153A of Ranbir Penal Code According to him he immediately directed the Office-in-charge of Police Station, Qazi Kund that Shri Bhim Singh may be apprehended as and when he reached his jurisdiction. He further instructed him that he should be brought to the District Headquarters, Anantnag after his arrest. These statements are obviously untrue in view of

the affidavit of Shri Khajuria, Inspector General of Police that the information to the Superintendent of Police, Anantnag was conveyed through the Police Control Room, Srinagar on 10th Sept., 1985. Shri Mir has not chosen to explain why he expected Shri Bhim Singh to pass through Qazi Kund that night. Quite obviously even before he had received any information from the Police Control Room about the alleged case registered against Shri Bhim Singh, Shri Mir had instructed the Officer-in-charge, Police Station, Qazi Kund to arrest Shri Bhim Singh if he came within his jurisdiction. Whether he did it on his own and if so, for what reason or whether he did it on other instructions received by him is a matter which requires our consideration. At about 3.00 A. M., according to Shri Mir, Shri Bhim Singh was arrested at Qazi Kund by the Officer in-charge of Police Station, Qazi Kund and brought to the District Headquarters where it appears Shri Bhim Singh was provided with facilities for rest, wash, breakfast, etc. It is necessary to mention here that no affidavit has been filed before us by the Officer-in-charge of Police Station, Qazi Kund, the officer who arrested Shri Bhim Singh. It appears that under the orders of the Superintendent of Police, Anantnag, Shri Bhim Singh was taken from Anantnag by Shafi Laigroo, Inspector of Police, District Police Lines, Anantnag in a Matador at about 7.30 A.M. on 10th September, 1985. They reached, according to Mohd Shafi Laigroo, Batota at 2.00 P.M.

where Bhim Singh was provided with lunch. They reached Udhampur at 5.00 P. M. where Bhim Singh was provided with tea and finally they reached Jammu city Police Station at 7.30 P.M. There they learnt that Bhim Singh was wanted in connection with a case registered by the police of Pacca Danga Station. He was, therefore, taken to Pacca Danga Police Station and handed over to the Officer-in-charge of Pacca Danga Police Station. Mohd. Amin Amjum, Deputy Superintendent of Police Headquarters, Udhampur and Shri Rajender Gupta, Probationary Deputy Superintendent of Police, Udhampur were directed by the Senior Superintendent of Police, Udhampur to see to the safe passage of Bhim Singh through Udhampur District. They were informed that Bhim Singh was taken from Anantnag to Jammu in a Matador. So they followed the Matador in which Bhim Singh was being taken from Chenani Police Station to Jammu and thereafter returned to their respective stations. According to the Inspector General of Police, Shri Bhim Singh was taken to Police Station Pacca Danga at about 9.30 P. M. On 11th Sept. 1985, a remand to police custody for two days was obtained from an Executive Magistrate First Class. A copy of the application for remand made in Urdu with the endorsement of the Executive Magistrate First Class has been filed as an annexure to the affidavit of Shri Khazuria. The endorsement says, "Remanded for two days with effect from 11th instant." It is signed by the Magistrate and dated 11th Sept., 1985. Neither

the application nor the endorsement shows that Shri Bhim Singh was produced before the Magistrate when remand was sought. Shri Bhim Singh expressly denied that he was produced before any Magistrate on 11th With reference to the remand obtained on 11th Sept., 1985, Shri Khajuria does not state in his affidavit that Shri Bhim Singh was produced before the Executive Magistrate, First Class on 11th Sept 1985. But in very careful and guarded language he says, "A remand to police custody for two days was obtained by Pacca Danga Police Station from Executive Magistrate, First Class on 11th Sept., 1985." The Officer-in-charge Police Station Pacca Danga has not filed any affidavit. It has to be mentioned here that Shri Bhim Singh moved an application before the Executive Magistrate on 24th Oct., 1985 to be informed as to the time when remand was obtained from the Magistrate. The Magistrate made the following endorsement on the application of Shri Bhim Singh :

"Returned in original to the applicant with the remarks that the remand application was moved before me by the SHO Pacca Danga Jammu on 11th September, 1985 after office hours in the evening at my residence and the (illegible) remanded the applicant in police custody for a period of two days alone."

On the expiry of the remand of two days granted by the Executive Magistrate, a further remand was obtained for one day, this time, not from the Executive Magistrate, First Class, but, from the Sub Judge. It was probably thought not

wise to go before the same Magistrate and ask for a second remand The application made in Urdu to the Sub-Judge with the endorsement of the Sub-Judge has also been filed as an annexure to the Affidavit of Shri Khajuria. The endorsement of the Sub-Judge reads :

"Application for police remand has been moved by Shri Bansi Lal (illegible) S. H. O. P/ S Pacca Danga with the submission that the accused Shri Bhim Singh is sick (Medical Certificate attached) and he be removed to the Police lock up as the investigation in the case is still in progress.

Perused the police diaries with the SHO and also the medical (illegible) examination slip. The accused is authorised to be left in police lock up for one day. The accused be produced in the court by tomorrow for further necessary remand orders."

The endorsement is signed by the Sub-Judge and is dated 13th Sept., 1985. We have again to mention here that Shri Bhim Singh requested the Magistrate to give him a copy of the Medical certificate purported to have been submitted by the S. H. O. Pacca Danga. On this application, the Sub-Judge made the following endorsement :

"Shri Bhim Singh has moved an application requesting this Court to certify the time when the police remand application was moved before me by Police P/S Pacca Danga on 13-9-85. The application is also accompanied with a photostat copy of the remand order passed

by me on 13-9-85 as a duty magistrate. The application in original was forwarded to the I/C Police Station Pacca Danga for report and production of case diaries of the case for perusal, but it has been reported that the case diaries are with SHO who is out on law and order duty.

From the perusal of the photostat copies of the remand order and from my recollection, it is certified that the remand application was moved before me at my residence after court hours in the evening

Shri Bhim Singh swears in his rejoinder affidavit that he was not produced before the Sub-Judge on 13th, nor was he examined at any time by any doctor. Shri Khajuria in his affidavit again uses very careful language and says, "On the expiry of this remand, an application for further remand was submitted before the Sub-Judge (Judicial Magistrate First Class) on 13th Sept., 1985, who extended the remand by one day." Shri Khajuria does not say a word about Shri Bhim Singh having been examined by any doctor. He makes no reference to the production of any medical certificate before the Sub-Judge. As already mentioned, the Officer in-charge of the Pacca Danga Police Station has not filed any affidavit before us. Thereafter on 14th Sept., 1985, Shri Bhim Singh was produced before the Sub-Judge and was remanded to judicial custody for two days with a direction to produce him before the Sessions Judge, Jammu on 16th Sept., 1985. He was accordingly taken to the Court of the Sessions Judge on 16th Sept., 1985, but as the

Sessions Judge was absent, he was produced before the Additional Sessions Judge. He was released on bail on his personal bond by the Additional Sessions Judge. That he was produced before the Magistrate on 14th, remanded to judicial custody for two days, produced before the Additional Sessions Judge on 16th and released on bail are facts which are not disputed by Shri Bhim Singh. In his affidavit when he refers to the events of 14th and 16th September, 1985, Shri Khajuria takes good care to use the words "produced before the Sub Judge" and "produced before the Additional Sessions Judge". As mentioned by us earlier, with reference to the events of 11th and 13th Sept., 1985, Shri Khajuria very carefully refrained from using the word "produced". He merely said "remand was obtained". Shri Bhim Singh in his supplemental and rejoinder affidavits has stated certain facts relating to alleged further harassment by the police. We are not concerned with those further facts for the purposes of this case. We are only concerned with the detention of Shri Bhim Singh from 3.00 A.M. on 10th Sept., 1985 until he was produced before the Sub-Judge on 14th Sept., 1985. The two remand orders said to have been made by the Executive Magistrate First Class and Sub Judge on 11th and 13th Sept., 1985 respectively do not contain any statement that Shri Bhim Singh was produced either before the Executive Magistrate First Class or before the Sub-Judge. The applications for remand also do not contain any statement that Shri Bhim Singh

was being produced before the Magistrate or the Sub-Judge. Shri Khajuria, the Inspector General of Police has very carefully chosen his words and stated in the affidavit that remand orders were obtained. He refrained from stating that Shri Bhim Singh was produced before the Magistrate or the Sub-Judge on 11th and 13th. The Medical Certificate referred to in the application dated 13th Sept. 1985 has also not been produced and Shri Khajuria makes no reference to it in his affidavit. In addition we have the important circumstance that no affidavit of the Officer-in-charge of the Police Station Pacca Danga has been filed before us. Nor has the affidavit of the officer, who arrested Shri Bhim Singh been filed before us. At the time of hearing the petition on 19th Nov. 1985, Shri E. C. Aggarwal stated to us that the affidavits of the two police officers had been got ready but were mislaid. He tried to show us some photostat copies of the alleged affidavits and prayed that the case might be adjourned for filing the affidavits of the two police officers. We refused to accede to the request. There was ample time for the respondents to file the affidavits of the two police officers after we issued notice to the respondents. It is not disputed that right from the beginning, they were aware of the writ petition filed in this Court. The affidavits of Shri Khajuria and others were filed as far back as 16th Oct., 1985 and there was no reason whatsoever for not filing the affidavits of the two police officers at that time. When the complaint was of illegal arrest and detention, the least one

would expect the respondents to do is to file the affidavits of the officer who arrested the petitioner and the officer who produced him before the Magistrate for the purpose of obtaining orders of remand. Instead of filing their affidavits, several inconsequential affidavits were filed perhaps only to confuse the issue. Shri Khajuria, the Inspector General of Police filed a lengthy affidavit containing statements of fact, most of which he could not be personally aware of. However, he chose to use careful language, as pointed out by us, whenever he referred to the remand of Shri Bhim Singh or his production before a Magistrate or Sub-Judge. We are convinced that the failure to file the affidavits of the officers, who arrested Shri Bhim Singh and the Sub-Inspector, incharge of Pacca Danga Police Station was deliberate. They were to be kept back until there was dire necessity. We do not have the slightest hesitation in holding that Shri Bhim Singh was not produced before the Executive Magistrate First Class on 11th and was not produced before the Sub-Judge on 13th. Orders of remand were obtained from the Executive Magistrate and the Sub-Judge on the applications of the police officers without the production of Shri Bhim Singh before them. The manner in which the orders were obtained, i.e., at the residence of the Magistrate and the Sub-Judge after office hours, indicates the surreptitious nature of the conduct of the police. The Executive Magistrate and the Sub-Judge do not at all seem to have been concerned that the

person whom they were remanding to custody had not been produced before them. They acted in a very casual way and we consider it a great pity that they acted without any sense of responsibility or genuine concern for the liberty of the subject, The police officers, of course, acted deliberately and mala fide and the Magistrate and the Sub-Judge aided them either by colluding with them or by their casual attitude. We do not have any doubt that Shri Bhim Singh was not produced either before the Magistrate on 11th or before the Sub-Judge on 13th, though he was arrested in the early hours of the morning of 10th. There certainly was a gross violation of Shri Bhim Singh's constitutional rights under Arts. 21 and 22(2). Earlier we referred to the circumstance that though Shri Khajuria, Inspector General of Police stated that information was sent to Superintendent of Police, Anantnag through the Police Control Room, Srinagar on 10th Sept. 1985, Shri Mir, the Superintendent of Police, Anantnag stated that on 9th Sept., 1985 at 11.30 P.M., he was informed by the Police Control Room, Srinagar that Shri Bhim Singh was required to be apprehended as he was wanted in a case registered under Section 153-A of the Ranbir Penal Code. Nobody cared to explain why it was thought that Bhim Singh would pass through Qazi Kund in Anantnag District on the night of September 9-10. Nobody thought fit to explain how and why the Senior Superintendent of Police, Udhampur came to direct his officers to escort Bhim Singh. It has not

been explained how and when the Senior Superintendent of Police, Udhampur came to know of the arrest of Bhim Singh and who required him to arrange for the "safe passage" of Bhim Singh through Udhampur District. To our minds, it appears as if it was expected that Bhim Singh would proceed from Jammu to Srinagar on the intervening night of 9-10 September, 1985 as there was a meeting of the Assembly on 11th September and the police were alerted to arrest him when sighted en route to Srinagar and take him back to prevent him from proceeding to Srinagar to attend the Session of the Legislative Assembly. We can only say that the Police Officers acted in a most highhanded way. We do not wish to use stronger words to condemn the authoritarian acts of the police. If the personal liberty of a Member of the Legislative Assembly is to be played with in this fashion, one can only wonder what may happen to lesser mortals! Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct. However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and

*Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in **Rudul Sah v. State of Bihar, (1983) 3 SCR 508** and **Sebastian M. Hongray v. Union of India, AIR 1984 SC 1026**. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from today. The amount will be deposited with the Registrar of this Court and paid to Shri Bhim Singh.”*

68. In a case of police atrocities, their Lordships of the Supreme Court in **Peoples’ Union for Democratic Rights through its Secretary and another Vs. Police Commissioner, Delhi Police Headquarters and another (1989) 4 Supreme Court Cases 730** have awarded a sum of

Rs.50,000/- in case of the petitioner and a sum of Rs.500/- to the lady who was stripped of her clothes at the Police Station. Their Lordships have held as under:

“4. Under the above circumstances we direct that the family of Ram Swaroop who is dead will be paid Rs. 50,000.00 as compensation, which will be invested in some scheme under the Life Insurance Corporation, so that the destitute family may get some amount monthly and the money may also be kept secured. It is also directed that petitioner 2 Patasi who was stripped of her clothes at the police station, shall be paid Rs. 500.00 as compensation and the 8 other persons namely (1) Dandwa (2) Ram Prasad (3) Jaipal (4) Mahavir (5) Kannu (6) Munsjia (7) Hukka and (8) Pratap, who were taken in the police station without being paid for their work will be paid Rs. 25.00 each. It is directed that after investigation and inquiry officers who are found guilty, the amount paid as compensation or part thereof may be recovered from these persons out of their salaries after giving them opportunity to show cause.”

69. Their Lordships of the Supreme Court in **Saheli, a Women's Resources Centre through Ms. Nalini Bhanot and others Vs. Commissioner of Police, Delhi and others AIR 1990 Supreme Court 513** have held that in a case where a 9 years old child died of beatings and assault by police officer, the State Government was directed to pay a sum of Rs. 75,000/- as compensation to mother of victim. Their Lordships have

further held that in a case of death due to police atrocities, the State is liable to pay compensation. Their Lordships have also held that the State is liable for tortuous act committed by its agency. In this case, the child was killed on account of beating and assault by the police acting in violation and excess of power vested in them. Their Lordships have held that mother of the child was entitled to exemplary compensation of Rs. 75,000/- from State for death of the child. Their Lordships have held as under:

“10. It is now apparent from the report dated 5.12.1987 of the Inspector of the Crime Branch, Delhi as well as the counter-affidavit of the Deputy Commissioner of Police, Delhi on behalf of the Commissioner of Police, Delhi and also from the fact that the prosecution has been launched in connection with the death of Naresh, son of Kamlesh Kumari showing that Naresh was done to death on account of the beating and assault by the agency of the sovereign power acting in violation and excess of the power vested in such agency. The mother of the child, Kamlesh Kumari, in our considered opinion, is so entitled to get compensation for the death of her son from the respondent No. 2, Delhi Administration.

11. An action for damages lies for bodily harm which includes battery, assault, false imprisonment, physical injuries and death. In cases of assault, battery and false imprisonment the damages are at large and represent a solatium for the mental pain, distress, indignity, loss of liberty and death. As we have held hereinbefore that the son of Kamlesh Kumari aged 9 years died due to beating and assault by

the S.H.O., Lal Singh and as such she is entitled to get the damages for the death of her son. It is well settled now that the State is responsible for the tortious acts of its employees. The respondent No. 2, Delhi Administration is liable for payment of compensation to Smt. Kamlesh Kumari for the death of her son due to beating by the S. H. O. of Anand Parbat Police Station, Shri Lal Singh.

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15. On a conspectus of these decisions we deem it just and proper to direct the Delhi Administration, respondent No. 2 to pay compensation to Kamlesh Kumari, mother of the deceased, Naresh a sum of Rs. 75,000/- within a period of four weeks from the date of this Judgment. The Delhi Administration may take appropriate steps for recovery of the amount paid as compensation or part thereof from the officers who will be found responsible, if they are so advised. As the Police Officers are not parties before us, we state that any observation made by us in justification of this order shall not have any bearing in any proceedings specially criminal prosecution pending against the police officials in connection with the death of Naresh. The writ petitions are disposed of accordingly.”

70. Their Lordships of the Supreme Court again in **Gauri Shanker Sharma Vs. State of U.P. 1990 (Supp) SCC 656** have held that it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third degree methods since they are in charge of police station records which they do not find

difficult to manipulate.

71. Their Lordships of the Supreme Court in **Sham Kant Vs. State of Maharashtra, AIR 1992 Supreme Court 1879**, in a case of custodial violence have held as under:

“27. In a case of this nature, one cannot expect direct evidence from independent witnesses as the most unfortunate and shameful incident took place both in the police station and the temple in secrecy while the undertrial prisoners were under the custody of the police.”

72. A Division Bench of Orissa High Court in **Golakha Chandra Jena Vs. Director General of Police and others, 1992 CRI. L.J. 2901** has held that if death is only due to police torture, the State is liable to pay compensation. Their Lordships have held as under:

*“13. The death of Pramod was, therefore, violative of Article 21 of the Constitution. So, it is a fit case where appropriate compensation should be awarded to the petitioner. The question is about the quantum of compensation. In **Saheli V. Comr. Of Police, AIR 1990 SC 513**, the State Government was directed to pay a sum of Rs. 75,000/- as compensation to the mother of the victim of police torture who was aged about 9 years. In **Peoples’ Union for Democratic Rights V. State of Bihar, AIR 1987 SC 355: (1987 Cri LJ 528)**, the Court had, however, granted a sum of Rs. 20,000/- to the victim of police firing.*

14. In the present case what we find is that according to the petitioner Pramod had been married just two months earlier and he was the

only member of the house looking after agriculture. The loss to the wife of Pramod cannot really be compensated by money. This apart, as he was said to be the only member of the house looking after agriculture, the financial hardship of the family can well be imagined; more so, when the petitioner belongs to the lower strata of the society.”

73. Their Lordships of the Supreme Court in **Nilabati Behera (Smt) alias Lalita Behera Vs. State of Orissa and others (1993) 2 Supreme Court Cases 746** have held that convicts, prisoners and under trials also have right under Article 21 of the Constitution of India and the State has strict duty to ensure that a citizen in custody of police or prison is not deprived of his right under Article 21, except in accordance with law. Their Lordships have further held that award of compensation in proceedings for enforcement of fundamental rights under Articles 32 and 226 is a remedy available in public law. Their Lordships have held as under :-

“10. In view of the decisions of this Court in Rudul Sah v. State of Bihar (1983) 3 SCR 508 , Sebastian M. Homgray v Union of India (1984) 1 SCR 904 (I) : (AIR 1984 SC 571) and Sebastian M. Homgray v Union of India (1984) 3 SCR 544 : (AIR 1984 SC 1026), Bhim Singh v. State of J. & K., 1984 (Supp) SCC 504 and (1985) 4 SCC 677 : (AIR 1986 SC 494), Saheli, A Women's Resources Centre v. Commr. of Police, Delhi Police Headquarters (1990) 1 SCC 422 : (AIR 1990 SC 513) and State of Maharashtra v. Ravikant S. Patil (1991) 2 SCC 373 : (1991 AIR SCW 871) the liability of the

State of Orissa in the present case to pay the compensation cannot be doubted and was rightly not disputed by the learned Additional Solicitor General. It would, however, be appropriate to spell out clearly the principle on which the liability of the State arises in such cases for payment of compensation and the distinction between this liability and the liability in private law for payment of compensation in an action on tort. It may be mentioned straightway that award of compensation in a proceeding under Art. 32 by this Court or by the High Court under Art. 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. This is a distinction between the two remedies to be borne in mind which also indicates the basis on which compensation is awarded in such proceedings. We shall now refer to the earlier decisions of this Court as well as some other decisions before further discussion of this principle.”

74. Their Lordships of the Supreme Court in **Pratul Kumar Sinha Vs. State of Bihar and another (1994) Supp. (3) SCC 100** have ordered to pay ex gratia payment of Rs. 25,000/- to family of deceased, who has died due to atrocities committed by the police. Their Lordships have further held that the State Government may recover this amount from the tort-feasors. Their Lordships have held as under:

“2. However, because of the atrocities committed

by the police, three young lives were lost. One of them was a bachelor while the other two were married and left behind their young widows. We think that in order to ensure that they do not have difficulty on account of this loss some ex-gratia payment must be made to them. We direct that an ex-gratia payment of Rs. 25,000.00 each be paid to the widows of the married persons and the parents of the bachelor. In order to ensure that this money is not frittered away, we direct the District Judge concerned of Jagannathpur to ensure that proper arrangements are made so far as the utilisation of the amount is concerned. We, therefore, direct the State Government to deposit the money with the District Judge of the area comprising Jagannathpur Police Station who will inform the beneficiaries about this court's order and make such arrangement as he considers appropriate after ascertaining the views of the beneficiaries in regard to this ex-gratia amount. If the State Government so desires it will be free to take such action as it considers necessary to recover this amount from the tort-feasors. The amount should be deposited with the District Judge within six weeks from today. With these observations, we dispose of this writ petition.”

75. Their Lordships of the Supreme Court in **Arvinder Singh Bagga Vs. State of U.P. and others (1994) 6 Supreme Court Cases 565**, in a case where a married women was caused physical, mental and psychological torture by the police officers, the State Govt. was directed to launch prosecution against the police officers concerned and to pay

compensation of Rs. 10,000/- to the victim woman and her husband and Rs. 5000/- to each of the other victims.

76. Their Lordships of the Supreme Court in **Inder Singh Vs. State of Punjab and others (1995) 3 SCC 702** have held that the primary duty of those in uniform is to uphold law and order and protect the citizen. If members of a police force resort to illegal abduction and assassination, if other members of that police force do not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination, the case is not one of errant behaviour by a few members of that police force, it betrays scant respect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspicion. Their Lordships have further held that when the police force of a State acts as the Punjab Police has in this case, the State whose arm that force is must bear the consequences. The State of Punjab was directed to pay to the legal representatives of each of the said seven persons an amount of Rs. 1.50 lakhs within two weeks. Their Lordships have :further directed that the prosecution launched against the erring officials was to be expeditiously conducted and disciplinary inquiries were ordered to be initiated against the accused persons. Their Lordships have held as under:

“9. The Punjab Police would appear to have forgotten that it was a police force and that the primary duty of those in uniform is to uphold law and order and protect the citizen. If members of a

police force resort to illegal abduction and assassination, if other members of that police force do not record and Investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination, the case is not one of errant behaviour by a few members of that police force. Who do not see that "constitutional culture", as Mr. Tulsi put it, had percolated to the Punjab Police. On the contrary it betrays scant respect for the life and liberty of innocent citizens and exposes the willingness of others in uniform to lend a helping hand to one who wreaks private vengeance on mere suspicion.

13. Disciplinary inquiries must be started against the aforesaid accused as also the said Sita Ram and the then DIG, Border Range, Amritsar. Others responsible for delaying the registration of the complaint and inquiry thereon must also be identified and proceeded against."

77. Their Lordships of the Supreme Court in **Kewal Pati (Smt) Vs. State of U.P. and others (1995) 3 Supreme Court Cases 600**, in a case where the convict serving out the sentence was killed by a co-accused in jail, have held that killing in jail resulted in deprivation of life of the convict contrary to law, jail authorities having failed to ensure life and safety of the convict in jail, hence, widow and children of the deceased who were deprived of company and affection of the deceased are entitled to compensation. Their Lordships have ordered to pay a sum of Rs. 1 lakh to

the widow and children of the deceased. Their Lordships have held as under:

“3. In the result this petition is allowed by directing that the State of U.P. shall deposit a sum of Rs. 1,00,000.00 within three months from today, with the Registrar of this court. A sum of Rs. 50,000.00 out of this amount shall be deposited in fixed deposit in any nationalised bank and the interest of it shall be paid to the wife and the children. The remaining amount shall be paid to the wife by the Registrar after being satisfied about the identification of the petitioner. The amount in deposit shall be paid to the wife on her option after all the children become major. In case of petitioner's death prior to the children becoming major, the amount shall be divided equally between the surviving children.”

78. Their Lordships of the Supreme Court in **State of M.P. Vs. Shyamsunder Trivedi and others (1995) 4 Supreme Court Cases 262** in a case of custodial death by police torture have held that generally when ocular and other evidence is not available, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Their Lordships have further held that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect. Their Lordships have further held that the Court must adopt a

realistic rather than a narrow technical approach. Their Lordships have held as under:

“17. From our independent analysis of the materials on the record, we are satisfied that Respondents 1 and 3 to 5 were definitely present at the police station and were directly or indirectly involved in the torture of Nathu Banjara and his subsequent death while in the police custody as also in making attempts to screen the offence to enable the guilty to escape punishment. The trial court and the High court, if we may say so with respect, exhibited a total lack of sensitivity and a "could not care less" attitude in appreciating the evidence on the record and thereby condoning the barbarous third degree methods which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to

directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day.

18. In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so dehumanising as the conduct of police in practising torture of any kind on a person in their custody. The Commission noticed with regret that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in

varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods. Though S. 330 and 331 of the Indian Penal Code make punishable those persons who cause hurt for the purpose of extorting the confession, by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows us, have been very few because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are. Disturbed by this situation, the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless, the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. The recommendation, however, we notice with concern, appears to have gone unnoticed and the crime of custodial torture etc. flourishes unabated. Keeping in view the dehumanising aspect of the crime, the flagrant violation of the fundamental rights of the

victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, we hope that the government and Legislature would give serious thought to the recommendation of the Law Commission (supra) and bring about appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The courts are also required to have a change in their outlook and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed."

79. Their Lordships of the Supreme Court in **Death of Sawinder Singh Grover, Re 1995 Supp (4) Supreme Court Cases 450** have ordered to pay a sum of Rs. 2,00,000/- by way of ex gratia payment.

80. Their Lordships of the Supreme Court in **Punjab & Haryana High Court Bar Association Vs. state of Punjab and others (1996) 4 Supreme Court Cases 742**, in a case of abduction and alleged murder of an advocate, his wife and minor child and report of CBI showing involvement of certain police officers have directed the State Government to pay compensation of Rs. 10,00,000/- to the parents of the Advocate. The person who was falsely implicated, was also directed to be released forthwith and a sum of Rs. 2,00,000/- was paid to him for the sufferings caused to him and

his remaining in jail for a long period. Their Lordships have further directed the Home Secretary of the State to suspend those police officers during the course of trial and the action was also directed to be taken by the DIG in the light of the findings of the CBI. Their Lordships have held as under:

*“2. The abduction and murder of Kulwant Singh and his family was the most heinous crime against humanity. It has taken a mysterious and an extremely shocking turn by the finding of the CBI that Harpreet Singh @ Lucky has been falsely implicated in the case. The CBI report indicates that under pressure from the police and finding no other alternative to save his life he agreed to their proposal to accept the murder of Kulwant Singh and his family members. Mr Navkiran Singh has rightly contended that the least this court can do at this stage is to compensate the old parents of Kulwant Singh. J.S. Verma, J. speaking for this court in **Nilabati Behera v. State of Orissa** held as under:*

"It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being

inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights

x x x

We respectfully concur with the view that the court is not helpless and the wide powers given to this court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional

guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the State, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case. This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

We may also refer to Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right, Article 9(5) reads as under:

'Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.'

We direct the Punjab government through secretary to government, Home Department to pay a sum of Rs. 10,00,000.00 (ten lakhs) to the parents (father and mother) of Kulwant Singh,

Advocate as compensation. The payment shall be made within two months of the receipt of this order.

3. Regarding Harpreet Singh @ Lucky the CBI reached the following conclusion:

"Facts emerging from the investigation lead us unequivocally and decisively to conclude that Harpreet Singh @ Lucky is not responsible for the abduction or murder of Kulwant Singh, Advocate and his family."

The police officers falsely implicated Harpreet Singh @ Lucky in the case. We direct that he be released from jail forthwith. We further direct the Punjab government through secretary to government, Home Department to pay a sum of Rs. 2,00,000.00 (two lakhs) to Harpreet Singh @ Lucky as compensation for the sufferings caused to him because of the false implication in the case in particular his remaining in jail for a long period, The amount of compensation shall be paid within two months of the receipt of this order. We further direct the Home secretary, State of Punjab to provide security, if he considers it necessary, to Harpreet Singh @ Lucky. We further direct that in the event of conviction of the police officers, the amount of compensation paid to Harpreet Singh @ Lucky shall be recovered from them personally."

81. Their Lordships of the Supreme Court in **People's Union for Civil Liberties Vs. Union of India and another AIR 1997 Supreme Court 1203** have awarded a sum of Rs. 1,00,000/- to the family of each deceased who were killed by the police. Their Lordships have held as under:

“9. *In Nilabati Behera alias Lalita Behera v. State of Orissa, (1993) 2 SCC 746 : (1993 AIR SCW 2366)*, this Court [J.S.Verma, Dr. A.S.Anand and N.Venkatachala, JJ.] held that award of compensation in a proceeding under Article 32 by the Supreme Court or under Article 226 by the High Court is a remedy available in public law based on strict liability for contravention of fundamental rights. It is held that the defence of sovereign immunity does not apply in such a case even though it may be available as a defence in private law in an action based on tort. It is held further that the award of damages by the Supreme Court or the High Court in a writ proceeding is distinct from and in addition to the remedy in private law for damages. It is one mode of enforcing the fundamental rights by this Court or High Court. Reliance is placed upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 which says, "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation." The two opinions rendered by J.S.Verma, J. and Dr.A.S. Anand, J. are unanimous on the aforesaid dicta. The same view has been reiterated very recently by a Bench comprising Kuldeep Singh and Dr. A.S. Anand, JJ. in **D. K. Basu v. State of West Bengal [1996(9) SCALE 298]**. The observations in Para 56 of the judgment are apposite and may be quoted:

"Thus, to sum up, it is now a well accepted proposition in most of the jurisdictions, that

monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right of life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damage which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizens, under the public law jurisdiction is, thus, in addition to

the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."

10. *The reference to and reliance upon Article 9(5) of the International Covenant on Civil and Political Rights, 1966 in **Nilabati Behera, (1993 AIR SCW 2366)** raises an interesting question, viz., to what extent can the provisions of such international covenants/ conventions be read into national laws. This issue has been the subject-matter of a recent decision in Australia, viz., **Minister for Immigration and Ethnic Affairs v. Teoh, (1995)69 Australian Law Journal 423.** The United Nations Convention on the Rights of the Child was ratified by the Commonwealth Executive in December 1990 and had force in Australia from January 16, 1991 pursuant to a declaration made, on December 22, 1992, by the Attorney General pursuant to Section 47 (1) of the Human Rights and Equal opportunity Commission Act, 1986 to the effect that the said convention is an international instrument relating to human rights. Respondent Teoh, a Malaysian citizen was found to have imported and be in possession of heroin, for which he was convicted. A deportation order was passed on that basis. The Immigration Review Panel opined that deportation of Teoh would deprive his young children [who were Australian citizens] of their only financial support, landing them in bleak*

misery. Article 3 of the aforesaid Convention provides that "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". Teoh invoked this Article to ward off his deportation. The matter was carried to High Court where the question of enforceability of the Convention by the national Courts was thoroughly debated. Mason, CJ., speaking for himself and Dean, J., stated the position in the following words:

"It is well established that the provisions of an international treaty to which Australia is a party do not form part of Australian law unless those provisions have been validly incorporated into our municipal law by statute. [Chow Hung Ching v. The King, (1948) 77 CLR 449 at 478; Bradley v. The Commonwealth, (1973) 128 CLR 557 at 582; Simsek v. Macphee, (1982) 148 CLR 636 at 641-642; Koowarta v. Bjelke-Petersen, (1982) 153 CLR 168 at 211-212, 224-225; Kioa v. West, (1985) 159 CLR 550 at 570; Dietrich v. The Queen, (1992) 177 CLR 292 at 305; J. H. Rayner Ltd. v. Dept. of Trade, (1990) 2 AC 418 at 500. This principle has its foundation in the proposition that in our constitutional system the making and ratification of treaties fall within the province of the Executive in the exercise of its prerogative power whereas the making and the alteration of the law fall within the province of Parliament, not the Executive.] Simsek v.

Macphee, (1982) 148 CLR, at 641-642]. So, a treaty which has not been incorporated into our municipal law cannot operate as a direct source of individual rights and obligations under that law. In this case, it is common ground that the provisions of the Convention have not been incorporated in this way. It is not suggested that the declaration made pursuant to S. 47(1) of the Human Rights and Equal Opportunity Commission Act has this effect.

But the fact that the Convention has not been incorporated into Australian law does not mean that its ratification holds no significance for Australian law. Where a statute or subordinate legislation is ambiguous, the Courts should favour that construction which accords with Australia's obligations under a treaty or international convention to which Australia is a party [Chu Kheng Lim v. Minister for Immigration, (1992) 176 CLR 1 at 381, at least in those cases in which the legislation is enacted after, or, in contemplation of, entry into, or ratification of, the relevant international instrument. That is because Parliament, prima facie, intends to give effect to Australia's obligations under international law.

It is accepted that a statute is to be interpreted and applied, as far as its language permits, so that it is in conformity and not in conflict with the established rules of international law [Polites v. The Commonwealth, (1945) 70 CLR 60 at 68-69, 77, 80-81.....

Apart from influencing the construction of

a statute or subordinate legislation, an international convention may play a part in the development by the Courts of the common law. The provisions of an international convention to which Australia is a party, especially one which declares universal fundamental rights, may be used by the Courts as a legitimate guide in developing the common law [Mabo v. Queensland (No.2), (1991) 175 CLR 1 at 42, per Brennan, J.(with whom Mason CJ and McHugh J. agreed); Dietrich v. The Queen, (1992) 177 CLR, at 321, per Brennan J.; at 360, per Toohey J.Jago v. District Court of New South Wales, (1988) 12 NSWLR 558 at 569, per Kirby P; Derbyshire County Council v.Times Newspapers Ltd., (1992 QB 770]. But the Courts should act in this fashion with due circumspection when the Parliament itself has not seen fit to incorporate the provisions of a convention into our domestic law. Judicial development of the common law must not be seen as a back door means of importing an unincorporated convention into Australian law. A cautious approach to the development of the common law by reference to international conventions would be consistent with the approach which the Courts have hitherto adopted to the development of the common law by reference to statutory policy and statutory materials [Lamb v. Cotogno, (1987 164 CLR 1 at 11-12]. Much will depend upon the nature of relevant provision, the extent to which it has been accepted by the international community, the purpose which it is intended to serve and its

relationship to the existing principles of our domestic law.”

82. Their Lordships of the Supreme Court in **D.K. Basu Vs. State of W.B. (1997) 1 Supreme Court Cases 416** have held that torture, rape, death in police custody/lock-up infringes Article 21 as well as basic human rights and strikes a blow at the rule of law. Their Lordships have further held that torture involves not only physical suffering but also mental agony. Their Lordships have further held that victim of custodial violence and in case of his death in custody, his family members are entitled to compensation under public law in addition to the remedy available under private law for damages for tortuous act of the police personnel. Their Lordships have held as under:

“40. Ubi jus, Ibi Remedium - There is no wrong without a remedy. The law wills that in every case where a man is wronged and endamaged he must have a remedy. A mere declaration of invalidity of an action or finding of custodial violence or death in lock-up, does not by itself provide any meaningful remedy to a person whose fundamental right to life has been infringed. Much more needs to be done.

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42. Article 9(5) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that "anyone who has been the victim of unlawful arrest or detention shall have enforceable right to compensation". Of course, the Government of India at the time of its ratification (of ICCPR) in 1979 had made a

*specific reservation to the effect that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention and thus did not become a party to Covenant. That reservation, however, has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen. (See with advantage **Rudal Sah v. State of Bihar**, (1983) 4 SCC 141 : (AIR 1983 SC 1086); **Sebastian M. Hongrey v. Union of India**; **Bhim Singh v. state of Jammu and Kashmir** 1984 (Supp) SCC 504 and (1985) 4 SCC 677 : (AIR 1986 SC 494), **Saheli v. Commissioner of Police, Delhi**, (1990) 1 SCC 422 : (AIR 1990 SC 513). There is indeed no express provision in the Constitution of India for grant of compensation for violation of a fundamental right to life, nonetheless, this Court has judicially evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. (See : **Neelabati Behera v. State** (1993 AIR SCW 2366) (*supra*).*

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44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law

proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much, as the protector and custodian of the indefeasible rights of the citizen. The Courts have the obligation to satisfy the social aspirations of the citizen because the Courts and the law are for the people and expected to respond to their aspirations. A Court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and cumbersome judicial process.

Monetary compensation for redressal by the Court finding the infringement of the indefeasible right to life of the citizen is, therefore, a useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the bread winner of the family.”

83. Their Lordships of the Supreme Court in **Murti Devi Vs. State of Delhi and others (1998) 9 Supreme Court Cases 604** have awarded a sum of Rs. 2,50,000/- to the deceased's mother by the State in a case where an undertrial prisoner has died in jail.

84. Their Lordships of the Supreme Court in **State of Haryana Vs. Bhagirath and others (1999) 5 Supreme Court Cases 96** have held that the opinion of the medical expert is not binding on Court and the Court has to form its own opinion. Their Lordships have further held that if the opinion is bereft of logic or objectivity, the court is not obliged to go by that opinion. Their Lordships have further held that if one doctor forms one opinion and another doctor forms a different opinion on the same facts, it is open to the Judge to adopt the view which is more objective or probable. Their Lordships have held as under:

“15. The opinion given by a medical witness need not be the last word on the subject. Such an opinion shall be tested by the Court. If the opinion is bereft of logic or objectivity, Court is not obliged to go by that opinion. After all opinion is what is formed in the mind of a person regarding a fact situation. If one doctor forms one opinion and

another doctor forms a different opinion on the same facts it is open to the judge to adopt the view which is more objective or probable. Similarly if the opinion given by one doctor is not consistent with probability the Court has no liability to go by that opinion merely because it is said by the doctor. Of course, due weight must be given to opinions given by persons who are experts in the particular subject.”

85. Their Lordships of the Supreme Court in **Chairman, Railway Board and others Vs. Chandrima Das (Mrs) and others (2000) 2 Supreme Court Cases 465** have held that the State has vicarious liability to pay compensation for tortious acts of its employees. Their Lordships have further held that the doctrine of sovereign power not applicable in welfare State where functions of the State now extend to various fields which cannot be strictly related to sovereign power. Their Lordships have held as under:

“9. Various aspects of the Public Law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Public Law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions

*and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Govt. The causing of injuries, which amounted to tortious act, was compensated by this Court in many of its decisions beginning from **Rudul Sah v. State of Bihar**, (1983) 3 SCR 508 : (1983) 4 SCC 141 : AIR 1983 SC 1086. [See also **Bhim Singh v. State of Jammu and Kashmir**, (1985) 4 SCC 577 : AIR 1986 SC 494; **People's Union for Democratic Rights v. State of Bihar**, (1987) 1 SCR 631 : (1987) 1 SCC 265 : AIR 1987 SC 355; **People's Union for Democratic Rights Thru. Its Secy. v. Police Commissioner, Delhi Police Headquarters**, (1989) 4 SCC 730 : 1989 (1) SCALE 598; **Saheli, A Women's Resources Centre v. Commissioner of Police, Delhi**, (1990) 1 SCC 422 : 1989 Supp (2) SCR 488 : AIR 1990 SC 513; **Arvinder Singh Bagga v. State of U. P.**, (1994) 6 SCC 565 : AIR 1995 SC 117 : (1994 AIR SCW 4148); **P. Rathinam v. Union of India**, 1989 Supp (2) SCC 716; **In Re: Death of Sawinder Singh Grower**, (1995) Supp (4) SCC 450 : (1992) 6 JT (SC) 271 : 1992 (3) SCALE 34 (2); **Inder Singh v. State of Punjab**, (1995) 3 SCC 702 : AIR 1995 SC 1949 : (1995 AIR SCW 3037); **D. K. Basu v. State of West Bengal**, (1997) 1 SCC 416 : AIR 1997 SC 610 : (1997 AIR SCW 233)].*

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11. Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the

Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law.

12. *In the instant case, it is not a mere matter of violation of an ordinary right of a person but the violation of Fundamental Rights which is involved. Smt. Hanuffa Khatoon was a victim of rape. This Court in **Bodhisattwa Gautam v. Ms. Subhra Chakraborty**, (1996) 1 SCC 490 : (1996 AIR SCW 325 : AIR 1996 SC 922) has held "rape" as an offence which is violative of the Fundamental Right of a person guaranteed under Article 21 of the Constitution.*

The Court observed as under (Para 10 of AIR):

"Rape is a crime not only against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. Rape is therefore the most hated crime. It is a crime against basic human rights and is violative of the victims most cherished right, namely, right to life which includes right to live with human dignity contained in Article 21."

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14. *The main contention of the learned counsel for the appellants is that Mrs. Chandrima Das was only a practising advocate of the Calcutta*

High Court and was, in no way, connected or related to the victim, Smt. Hanuffa Khatoon and, therefore, she could not have filed a petition under Article 226 for damages or compensation being awarded to Smt. Hanuffa Khatoon on account of the rape committed on her. This contention is based on a misconception. Learned counsel for the appellants is under the impression that the petition filed before the Calcutta High Court was only a petition for damages or compensation for Smt. Hanuffa Khatoon. As a matter of fact, the reliefs which were claimed in the petition included the relief for compensation. But many other reliefs as, for example, relief for eradicating anti-social and criminal activities of various kinds at Howrah Railway Station were also claimed. The true nature of the petition, therefore, was that of a petition filed in public interest.

15. *The existence of a legal right, no doubt, is the foundation for a petition under Article 226 and a bare interest, may be of a minimum nature, may give locus standi to a person to file a Writ Petition, but the concept of "Locus Standi" has undergone a sea change, as we shall presently notice. In **Dr. Satyanarayana Sinha v. S. Lal and Co. Pvt. Ltd.**, AIR 1973 SC 2720 : (1973) 2 SCC 696, it was held that the foundation for exercising jurisdiction under Article 32 or Article 226 is ordinarily the personal or individual right of the petitioner himself. In writs like Habeas Corpus and Quo Warranto, the rule has been relaxed and modified.*

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17. In the context of Public Interest Litigation, however, the Court in its various judgments has given widest amplitude and meaning to the concept of locus standi. In **People's Union for Democratic Rights v. Union of India**, AIR 1982 SC 1473 : (1982) 3 SCC 235, it was laid down that Public Interest Litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to Court. (See also **Bandhua Mukti Morcha v. Union of India**, AIR 1984 SC 802 : 1984 (2) SCR 87 : (1984) 3 SCC 161 and **State of Himachal Pradesh v. Student's Parent Medical College, Shimla**, AIR 1985 SC 910 : (1985) 3 SCC 169 on the right to approach the Court in the realm of Public Interest Litigation. In **Bangalore Medical Trust v. B. S. Muddappa**, AIR 1991 SC 1902 : 1991 (3) SCR 102 : (1991) 4 SCC 54 : (1991 AIR SCW 2082), the Court held that the restricted meaning of aggrieved person and narrow outlook of specific injury has yielded in favour of a broad and wide construction in the wake of Public Interest Litigation. The Court further observed that public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on technical or conservative yardstick of the rule of locus standi or absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it

takes in its stride anyone who is not a mere "busy-body".

18. Having regard to the nature of the petition filed by respondent Mrs. Chandrima Das and the relief claimed therein it cannot be doubted that this petition was filed in public interest which could legally be filed by the respondent and the argument that she could not file that petition as there was nothing personal to her involved in that petition must be rejected."

86. In **R.D. Upadhyay Vs. State of A.P. and others (2001) 1 Supreme Court Cases 437**, their Lordships of the Supreme Court have held that money award cannot, however, renew a physical frame that has been battered and shattered due to the callous attitude of others. All that the courts can do in such cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with moderation, to express the court's condemnation of the tortious act committed by the State. Their Lordships have held as under:

"5. We could have directed some interim compensation to be paid to Ajoy Ghosh but considering his present state of mental and physical health, that would not be of any avail. He has no known relatives either. We are conscious of the fact that money award can be calculated only to make good financial loss. It is not an award for the sufferings already undergone which are incapable of calculation in terms of money. Money compensation may be awarded so that something tangible may be procured to replace

something of the like nature which has been destroyed or lost. Money award cannot, however, renew a physical frame that has been battered and shattered due to callous attitude of others. All that the courts can do in such cases is to award such sums of money, which may appear to be giving of some reasonable compensation, assessed with moderation, to express court's condemnation of the tortious act committed by the State.”

87. Their Lordships of the Supreme Court in **Smt. Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble and another 2003 Cr. L.J. 4548** have held that the torture and custodial violence by men in ‘Khaki’/State/or its functionaries cannot be permitted to defy constitutional right and in case direct evidence is rarely available, brotherhood ties permit other police witnesses to feign ignorance about the whole matter. Their Lordships have further held that insistence of establishment of proof beyond reasonable doubt results in miscarriage of justice. Their Lordships have further held that the custodial crime mostly goes unpunished. Their Lordships have further held that the Courts are also required to have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed. Their Lordships have held as under:

“6. Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.

7. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the Courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts must not lose sight of the fact

that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law into themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with.

8. *Though Sections 330 and 331 of the Indian Penal Code, 1860 (for short the 'IPC') make punishable those persons who cause hurt for the purpose of extorting the confession by making the offence punishable with sentence up to 10 years of imprisonment, but the convictions, as experience shows from track record have been very few*

compared to the considerable increase of such onslaught because the atrocities within the precincts of the police station are often left without much traces or any ocular or other direct evidence to prove as to who the offenders are. Disturbed by this situation the Law Commission in its 113th Report recommended amendments to the Indian Evidence Act, 1872 (in short the 'Evidence Act') so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in the police custody, the Court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove the contrary must be discharged by the police official concerned. Keeping in view the dehumanizing aspect of the crime, the flagrant violation of the fundamental rights of the victim of the crime and the growing rise in the crimes of this type, where only a few come to light and others don't, the Government and the legislature must give serious thought to the recommendation of the Law Commission and bring about the appropriate changes in the law not only to curb the custodial crime but also to see that the custodial crime does not go unpunished. The Courts are also required to have a change in their outlook approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt

a realistic rather than a narrow technical approach, while dealing with the cases of custodial crime so that as far as possible within their powers, the truth is found and guilty should not escape so that the victim of the crime has the satisfaction that ultimately the majesty of law has prevailed.”

88. Their Lordships of the Supreme Court in **Munshi Singh Gautam (Dead) and others Vs. State of M.P. (2005) 9 Supreme Court Cases 631** have held that rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Their Lordships have further held that the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. Their Lordships have held as under:

“3. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving

puritans and saviours of citizens' rights.

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6. *Rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues - and the present case is an apt illustration - as to how one after the other police witnesses feigned ignorance about the whole matter.*

7. *The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the Courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the*

prosecution to directly implicate them in the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law into themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with."

89. Their Lordships of the Supreme Court in **K.H. Shekarappa and others Vs. State of Karnatka (2009) 17 Supreme Court Cases 1**, have held that inspite of condemnation of such acts by this Court and the High Courts, certain police officials conduct themselves in a manner resulting into gruesome torture and death of suspects in the police custody. Their

Lordships have held as under:

“2. Though several constitutional and statutory provisions have been enacted to safeguard the personal liberty and life of citizens, incidents of torture and death in the police custody are ever on the rise. In spite of condemnation of such acts by this Court and High Courts, certain police officials conduct themselves in a manner resulting into gruesome torture and death of suspects in the police custody. There is no manner of doubt that these are the most heinous crimes committed by persons, who claim to be the protectors of the citizens. What is distressing to note is that the incidents of torture and death in the police custody take place under the shield of uniform and authority, in the four walls of a police station or in the lock-up, where the victims are totally helpless.”

90. Their Lordships of the Supreme Court in **Rubabbuddin Sheikh Vs. State of Gujrat and others (2009) 17 Supreme Court Cases 653**, in a case of fake encounter, have ordered ex gratia payment of Rs. 10 lakhs to LR.s. of deceased.

91. Their Lordships of the Supreme Court in **Smt. Selvi & Ors. Vs. State of Karnataka, AIR 2010 Supreme Court 1974** have held that one of the main functions of constitutionally prescribed rights is to safeguard the interests of citizens in the interactions with the Government. Their Lordships have further held that as the guardians of these rights, we will be failing in our duty if we permit any citizen to be forcibly subjected to the tests in question. Their Lordships have also discussed the concept of torture

in this judgment. Their Lordships have held as under:

“199. Having surveyed these materials, it is necessary to clarify that we are not absolutely bound by the contents of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) [Hereinafter ‘Torture Convention’] This is so because even though India is a signatory to this Convention, it has not been ratified by Parliament in the manner provided under Article 253 of the Constitution and neither do we have a national legislation which has provisions analogous to those of the Torture Convention. However, these materials do hold significant persuasive value since they represent an evolving international consensus on the nature and specific contents of human rights norms.

200. The definition of torture indicates that the threshold for the same is the intentional infliction of physical or mental pain and suffering, by or at the instance of a public official for the purpose of extracting information or confessions. ‘Cruel, Inhuman or Degrading Treatment’ has been defined as conduct that does not amount to torture but is wide enough to cover all kinds of abuses. Hence, proving the occurrence of ‘cruel, inhuman or degrading treatment’ would require a lower threshold than that of torture. In addition to highlighting these definitions, the counsel for the appellants have submitted that causing physical pain by injecting a drug can amount to ‘Injury’ as defined by Section 44 of the IPC or ‘Hurt’ as defined in Section 319 of the same Code.

201. *In response, the counsel for the respondents have drawn our attention to literature which suggests that in the case of the impugned techniques, the intention on part of the investigators is to extract information and not to inflict any pain or suffering. Furthermore, it has been contended that actual administration of either the Narco analysis techniques, the polygraph examination or the BEAP test does not involve a condemnable degree of 'physical pain or suffering'. Even though some physical force may be used or threats may be given to compel a person to undergo the tests, it was argued that the administration of these tests ordinarily does not result in physical injuries. [See: Linda M. Keller, 'Is Truth Serum Torture?' 20 American University International Law Review 521-612 (2005)] However, it is quite conceivable that the administration of any of these techniques could involve the infliction of 'mental pain or suffering' and the contents of their results could expose the subject to physical abuse. When a person undergoes a narcoanalysis test, he/she is in a half-conscious state and subsequently does not remember the revelations made in a drug-induced state. In the case of polygraph examination and the BEAP test, the test subject remains fully conscious during the tests but does not immediately know the nature and implications of the results derived from the same. However, when he/she later learns about the contents of the revelations, they may prove to be incriminatory or be in the nature of testimony that can be used to*

prosecute other individuals. We have also highlighted the likelihood of a person making incriminatory statements when he/she is subsequently confronted with the test results. The realisation of such consequences can indeed cause 'mental pain or suffering' for the person who was subjected to these tests. The test results could also support the theories or suspicions of the investigators in a particular case. These results could very well confirm suspicions about a person's involvement in a criminal act. For a person in custody, such confirmations could lead to specifically targeted behaviour such as physical abuse. In this regard, we have repeatedly expressed our concern with situations where the test results could trigger undesirable behaviour.

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205. It is undeniable that during a narcoanalysis interview, the test subject does lose 'awareness of place and passing of time'. It is also quite evident that all the three impugned techniques can be described as methods of interrogation which impair the test subject's 'capacity of decision or judgment'. Going by the language of these principles, we hold that the compulsory administration of the impugned techniques constitutes 'cruel, inhuman or degrading treatment' in the context of Article 21. It must be remembered that the law disapproves of involuntary testimony, irrespective of the nature and degree of coercion, threats, fraud or inducement used to elicit the same. The popular perceptions of terms such as 'torture' and 'cruel,

inhuman or degrading treatment' are associated with gory images of blood-letting and broken bones. However, we must recognise that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and longlasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, 'Criminal Defence in the Age of Terrorism - Torture', 48 New York Law School Law Review 201-274 (2003/2004)]

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220. One of the main functions of constitutionally prescribed rights is to safeguard the interests of citizens in their interactions with the government. As the guardians of these rights, we will be failing in our duty if we permit any citizen to be forcibly subjected to the tests in question. One could argue that some of the parties who will benefit from this decision are hardened criminals who have no regard for societal values. However, it must be borne in mind that in constitutional adjudication our concerns are not confined to the facts at hand but extend to the implications of our decision for the whole population as well as the future generations.

Sometimes there are apprehensions about judges imposing their personal sensibilities through broadly worded terms such as 'substantive due process', but in this case our inquiry has been based on a faithful understanding of principles entrenched in our Constitution. In this context it would be useful to refer to some observations made by the Supreme

Court of Israel in Public Committee Against Torture in Israel v. State of Israel, H.C. 5100 / 94 (1999), where it was held that the use of physical means (such as shaking the suspect, sleep-deprivation and enforcing uncomfortable positions for prolonged periods) during interrogation of terrorism suspects was illegal. Among other questions raised in that case, it was also held that the 'necessity' defence could be used only as a post factum justification for past conduct and that it could not be the basis of a blanket pre-emptive permission for coercive interrogation practices in the future. Ruling against such methods, Aharon Barak, J. held at p. 26:

"... This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the 'Rule of Law' and recognition of an individual's liberty constitutes an important component in its understanding of security."

92. Their Lordships of the Supreme Court in **Yadava Kumar Vs. Divisional Manager, National Insurance Company Limited and another (2010) 10 Supreme Court Cases 341** have held that the Court must be liberal and not niggardly inasmuch as in a free country law must value life and limb on a generous scale.

93. Their Lordships of the Supreme Court in **Prakash Kadam and others Vs. Ramprasad Vishwanath Gupta and another (2011) 6 Supreme Court Cases 189** have taken a serious view in the case of fake encounter.

Their Lordships have held that where fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare case. Their Lordships have held as under:

“27. We are of the view that in cases where a fake encounter is proved against policemen in a trial, they must be given death sentence, treating it as the rarest of rare cases. Fake ‘encounters’ are nothing but cold blooded, brutal murder by persons who are supposed to uphold the law. In our opinion if crimes are committed by ordinary people, ordinary punishment should be given, but if the offence is committed by policemen much harsher punishment should be given to them because they do an act totally contrary to their duties.

28. We warn policemen that they will not be excused for committing murder in the name of ‘encounter’ on the pretext that they were carrying out the orders of their superior officers or politicians, however high. In the Nuremburg trials the Nazi war criminals took the plea that ‘orders are orders’, nevertheless they were hanged. If a policeman is given an illegal order by any superior to do a fake ‘encounter’, it is his duty to refuse to carry out such illegal order, otherwise he will be charged for murder, and if found guilty sentenced to death. The ‘encounter’ philosophy is a criminal philosophy, and all policemen must know this. Trigger happy policemen who think they can kill people in the name of ‘encounter’ and get away with it should know that the gallows await them.”

94. Their Lordships of the Supreme Court in **Deputy Commissioner, Dharwad District, Dharwad and others Vs. Shivakka (2) and others (2011) 12 Supreme Court Cases 419** have held that where departmental proceedings having been initiated against erring police officers involved in beating deceased in custody and deceased having died in custody and criminal case pending and the High Court entertained the writ petition, the same was held as maintainable. Their Lordships have further held that the compensation awarded by the High Court was less than just. The High Court should have taken note of the fact that the only breadwinner of the family was killed in a barbaric manner and awarded adequate compensation. Their Lordships, while dismissing the S.L.P., directed the petitioners to pay total compensation of ₹ 10 lakhs to the respondents added therein. Their Lordships have held as under:

*“16. In view of the proposition laid down in the aforementioned judgments, we have no hesitation to hold that the learned Single Judge did not commit any error by entertaining the writ petition filed by respondent No. 1 and the direction given by him for payment of compensation to respondent Nos. 1 to 5 was rightly affirmed by the Division Bench of the High Court. At the same time, we are of the view that the compensation awarded by the High Court is less than just. The High Court should have taken note of the fact that the only bread winner of the family was killed in a barbaric manner and awarded adequate compensation keeping in view the ratio of the judgments of this Court including **Railway Board, v. Chandrima Das, 2000 (2) SCC 465.***

17. Therefore, while dismissing the special leave petition, we deem it proper to exercise power of this Court under Article 142 of the Constitution and direct the petitioners to pay total compensation of Rs. 10 lacs to respondent Nos. 1 to 5. The petitioners are directed to pay the amount of compensation within two months by getting prepared a demand draft in the name of respondent No.1 from a nationalised bank.

18. Liberty is given to the petitioners to withdraw the amount already deposited in the Registry of the High Court.”

95. Their Lordships of the Supreme Court in **Prithipal Singh and others Vs. State of Punjab and another (2012) 1 Supreme Court Cases 10** have held that police atrocities are always violative of the constitutional mandate, particularly, Articles 21 and 22. Such provisions ensure that arbitrary arrest and detention are not made. Their Lordships have further held that tolerance of police atrocities, would amount to acceptance of systematic subversion and erosion of the rule of law. Their Lordships have further held that the Court cannot be a silent spectator where the stinking facts warrant interference in order to serve the interest of justice. Their Lordships have further held that if there is material on record, the Court must take action against the erring police officials. Their Lordships have also held that in cases of custodial violence or deaths, it is difficult to get evidence against the policemen responsible for such deaths since police personnel prefer to remain silent and even pervert truth to save colleagues. Their Lordships have further held that in case abduction by police and illegal detention and torture of deceased is established by witnesses, the reversal of burden of proof is on the police to explain what happened to

deceased. Their Lordships have held as under:

*“53. In **State of West Bengal v. Mir Mohammad Omar AIR 2000 SC 2988**, this Court held that if fact is especially in the knowledge of any person, then burden of proving that fact is upon him. It is impossible for prosecution to prove certain facts particularly within the knowledge of accused. Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the Section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the Court to draw a different inference. Section 106 of the Evidence Act is designed to meet certain exceptional cases, in which, it would be impossible for the prosecution to establish certain facts which are particularly within the knowledge of the accused. (See also: **Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404; Sucha Singh v. State of Punjab, AIR 2001 SC 1436; and Sahadevan v. State, AIR 2003 SC 215**).*

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75. *In a case where the person is alleged to have died in police custody, it is difficult to get any kind of evidence.*

"6. Rarely in cases of police torture or custodial death, direct ocular evidence is available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are

by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues."

96. In **Ramlila Maidan Incident, In Re, (2012) 5 Supreme Court Cases 1**, their Lordships of the Supreme Court held that necessary procedural safeguards like public announcement of promulgation, banner display of prohibitory order and prior warning before use of force, were not observed by the police. Their Lordships awarded compensation of Rs. 5 lakhs to legal heirs of lady who died as a result of incident and compensation of Rs. 50,000/- was awarded to each of persons who were hospitalised due to serious injuries. Their Lordships further held that the term "liability", which is subject to reasonable restrictions, needs to be examined with reference to the other constitutional rights. Article 21 of the Constitution is the foundation of the constitutional scheme. The procedure established by law for deprivation of rights conferred by this Article must be fair, just and reasonable. Their Lordships have held as under :-

"15. I consider it appropriate to examine the term 'liberty', which is subject to reasonable restrictions, with reference to the other constitutional rights. Article 21 is the foundation of the constitutional scheme. It grants to every person the right to life and personal liberty. This Article prescribes a negative mandate that :

"21. Protection of life and personal liberty -
No person shall be deprived of his life or personal liberty except according to the procedure established by law."

The procedure established by law for deprivation of rights conferred by this Article must be fair, just and reasonable. The rules of justice and fair play require that State action should neither be unjust nor unfair, lest it attracts the vice of unreasonableness, thereby vitiating the law which prescribed that procedure and, consequently, the action taken thereunder.

16. Any action taken by a public authority which is entrusted with the statutory power has, therefore, to be tested by the application of two standards - first, the action must be within the scope of the authority conferred by law and, second, it must be reasonable. If any action, within the scope of the authority conferred by law is found to be unreasonable, it means that the procedure established under which that action is taken is itself unreasonable. The concept of "procedure established by law" changed its character after the judgment of this Court in the case of **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**, where this Court took the view as under : (SCC p. 284, para 7)

"7. The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be right and just and fair and not arbitrary fanciful or oppressive otherwise it would be no procedure at all and the requirement of

Article 21 would not be satisfied."

*This was also noted in **M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544** where where this Court took the following view: (SCC p.551, para 10)*

"10. 'Procedure established by law' are words of deep meaning for all lovers of liberty and judicial sentinels."

17. What emerges from the above principles, which has also been followed in a catena of judgments of this Court, is that the law itself has to be reasonable and furthermore, the action under that law has to be in accordance with the law so established. Non-observance of either of this can vitiate the action, but if the former is invalid, the latter cannot withstand."

Their Lordships have also explained the meaning of term "emergency", under Section 144 Cr.P.C., to mean in its common parlance an exigent situation; a serious, unexpected and potentially dangerous situation requiring immediate action. Such an emergent case must exist for the purpose of passing a protective or preventive order.

97. Their Lordships of the Supreme Court in **Raj Kumar Vs. Ajay Kumar and another (2011) 1 Supreme Court Cases 343** have laid down the following principles for assessment of loss of future earnings on account of permanent disability:

"9. The percentage of permanent disability is expressed by the Doctors with reference to the whole body, or more often than not, with reference to a particular limb. When a disability certificate states that the injured has suffered permanent disability to an extent of 45% of the

left lower limb, it is not the same as 45% permanent disability with reference to the whole body. The extent of disability of a limb (or part of the body) expressed in terms of a percentage of the total functions of that limb, obviously cannot be assumed to be the extent of disability of the whole body. If there is 60% permanent disability of the right hand and 80% permanent disability of left leg, it does not mean that the extent of permanent disability with reference to the whole body is 140% (that is 80% plus 60%). If different parts of the body have suffered different percentages of disabilities, the sum total thereof expressed in terms of the permanent disability with reference to the whole body, cannot obviously exceed 100%.

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12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

- (i) whether the disablement is permanent or temporary;*
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;*
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.*

If the Tribunal concludes that there is no

permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

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19. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

Their Lordships have further held in this judgment that there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses. Their Lordships have held as under:

“27. In the case of an injured claimant with a disability, what is calculated is the future loss of earning of the claimant, payable to claimant, (as contrasted from loss of dependency calculated in a fatal accident, where the dependent family members of the deceased are the claimants). Therefore there is no need to deduct one-third or any other percentage from out of the income, towards the personal and living expenses.”

98. In the classic book, titled “The Negligence Liability of Public Authorities”, Second Edition, authored by Duncan Fairgrieve and Dan Squires QC, under the Chapter “The Problem of Public Authority Negligence Liability” it is stated as under :-

*“1.22 A third area of difficulty the courts have confronted is how to balance two competing impulses. On the one hand the courts seek to protect public authorities from excessive litigation, which wastes valuable resources and might encourage public authority employees to act in an overly defensive manner. At the same time the courts wish to ensure that those who have suffered harm because of the failures of public authorities and who deserve compensation are not left without a remedy. The competing considerations were described by Lord Steyn in **Gorringe v Calderdale Metropolitan Borough Council (2004) 1 WLR 1057, HL**, as follows:-*

On the one hand the courts must not contribute to the creation of a society bent on litigation, which is premised on the illusion that for every misfortune there is a remedy. On the other hand, there are cases

where the courts must recognise on principled grounds the compelling demands of corrective Justice or what has been called 'the rule of public policy which has first claim on the loyalty of the law: that wrongs should be remedied... Sometimes cases may not obviously fall in one category or the other. Truly difficult cases arise.

1.23 There are various reasons the courts seek to protect public authorities from liability. There is a concern that public authorities are at particular risk of speculative and unmeritorious litigation, and that it is not in the public interest for them to spend their funds fighting such cases. Even in deserving cases, in which a claimant has genuinely suffered harm because of the failures of a public authority, there is a concern that spending public money providing the claimant with what may be very high levels of compensation is not the most effective use of public resources. It is not clear, for example, where a local education authority fails to diagnose a child's dyslexia whether the best use of public resources is to compensate the child for the employment opportunities etc. he or she lost, or to improve education for other children in the future. It has also been suggested that the threat of litigation may skew the conduct of public authority employees in undesirable ways. If they are concerned about the threat of litigation, public authority employees may act in an overly defensive manner, and avoid taking risks for fear

of being sued. There is also the more general concern, expressed by Lord Steyn in the Gorringe case, about the growth of a pernicious 'compensation culture' in which individuals do not take responsibility for their actions and their failures, but seek to find others to blame for their 'every misfortune'.

1.24 Against this, as Lord Steyn suggested, needs to be balanced the 'compelling demands of corrective justice', and the aim of tort law of ensuring that those who wrongfully injure others provide compensation to ameliorate the harm they have caused. This ought not to be sacrificed, the argument goes, to the expediency of protecting public authority resources or encouraging public authority employees to act in a more efficient and productive manner. If a public authority causes harm because of its carelessness, it, like any other defendant, ought to provide compensation.

1.25 The tension between attempting to protect public authorities from litigation while at the same time fulfilling the requirements of 'corrective justice' has pulled the courts in different directions at different times. One of the key explanatory factors behind the various shifts in the approach taken by the courts to public authority negligence claims has been a sense that the law has moved too far in one direction or another. We examine in the following section the trends in the case law in negligence claims against public authorities. As we will suggest, a principal motor behind those trends has been the

re-evaluation by the courts of where the balance between protection of public authorities and justice to individual claimants ought to lie. Doctrinally re-evaluation has manifested itself, in part, in the courts' determination of whether it is 'fair, just and reasonable' to impose a duty of care on a public authority. At times the courts have determined that fairness, Justice, and reasonableness required greater protection for public authorities, and at others that there should be greater availability of damages for individuals who suffer harm.

*1.26 During the late 1980s and for most of the 1990s, in cases such as **Hill v Chief Constable of West Yorkshire, (1989) AC 53, HL** and **X v Bedfordshire County Council, (1995) 2 AC 633 HL**, the courts' primary concern appeared to have been protecting public authorities from liability. It was in this period that cases were routinely struck out on general grounds of public policy, such as avoiding the courts being flooded with litigation, conserving public resources, and preventing defensive practices. Towards the end of the 1990s there was a growing sense that the law may have gone too far in protecting public authorities from liability. The law was subject to considerable criticism from commentators, and it was suggested that judges were 'sacrificing traditional tort aims [of individual justice] to the altar of prudent management of admittedly scarce resources.*

1.27 What followed in the late 1990s and into the next decade was an effort to correct this

*tendency. In part under the influence of the European Court of Human Rights, the House of Lords in cases such as **Barrett v Enfield London Borough Council, (2001) 2 AC 550, HL** and **Phelps v Hillingdon London Borough Council, (2001) 2 AC 619, HL**, sought to give greater precedence to compensating those who have suffered wrongs, and less weight to the protection of public authorities from liability. It is important for the courts, Lord Slynn stressed in the Barrett case, to 'set reasonable bounds to the immunity (which)... public authorities can assert'. Their Lordships sought in the Barrett and Phelps cases to redress the balance. They rejected many of the policy arguments used in earlier cases to deny a duty of care, and the law moved away from effectively conferring immunities on public authorities and towards a recognition that if public authorities carelessly caused harm, they ought to provide compensation."*

99. In **Barrett v. Enfield London Borough Council, (2001) 2 AC 550**, Lord Slynn has held as under :-

"It is no doubt right for the courts to restrain within reasonable bounds claims against public authorities exercising statutory powers in this social welfare context. It is equally important to set reasonable bounds to the immunity such public authorities can assert. In Andenas and Fairgrieve "Sufficiently Serious? Judicial Restraint in Tortious Liability of Public Authorities on the European Influence" (see English Public Law and the Common Law of

Europe, ed Andenas (1998) p 285) the authors show the difficult problems which have arisen in cases involving claims for negligence in a statutory context and not least in analysing “the method adopted by the judiciary to ensure restraint in negligence actions against public bodies”.

100. Similarly, in **Phelps v. Hillingdon London Borough Council, (2001) 2 AC 619**, Lord Slynn has held as under :-

“Since the authority can only act through its employees or agents, and if they are negligent vicarious liability will arise, it may rarely be necessary to invoke a claim for direct liability. After the argument in these cases, I do not, however, accept the absolute statement that an education authority “owes no common law duty of care ... in the exercise of the powers ... relating to children with special educational needs” under the 1981 Act. That issue, however, as I have said does not fall for decision in Pamela's case.”

101. It is the duty of the police to take justified, necessary, reasonable and proportionate steps while dealing with law and order. Moreover, the law must be prudently considered, precisely written, well defined and strictly enforced to preserve rule of law. The State is vicariously liable for the negligent acts of its employees or agents. The police by resorting to firing on unarmed peaceful gathering of workers has also violated their human rights. The authorities are accountable for their failure to protect right to life under Article 21 of the Constitution of India.

102. In the present case, the police was negligent in discharge of their duties. The firing resorted to by them on the workmen led to eight deaths and numerous persons were injured. The workmen have right to life under Article 21 of the Constitution of India and the same has been infringed by the police force by using excessive force in an unreasonable and unauthorised manner. It is the duty of the police to ensure that their acts do not harm others by acting negligently.

103. The labourers were employees of Bhawani Cotton Mill, Abohar. Their income can be assessed at ₹ 3,000/- per month in the year 1991, and after making deductions, datum figure would come to ₹ 2,000/- per month, i.e. ₹ 24,000/- per year. Since the workmen, namely Maan Singh, Ram Gopal, Basant, Data Ram, Shri Krishan and Jai Ram, who died in the police firing, were aged about 30 years, 26 years, 40 years, 24-25 years, 40 years and 35-40 years, therefore, multiplier of 13, 14, 12, 15, 12 and 12, respectively, would be appropriate. Thus, families of deceased workman, namely Maan Singh, Ram Gopal, Basant, Data Ram, Shri Krishan and Jai Ram, would be entitled to compensation of Rs. 3,12,000/-, Rs. 3,36,000/-, Rs. 2,88,000/-, Rs. 3,60,000/-, Rs. 2,88,000/- and Rs. 2,88,000/-, respectively. However, each of the families of two boys, aged 11 years and 18 years, namely Pappu and Narinder Kumar, respectively, who also lost their lives, would be entitled to compensation of Rs. 2,00,000/-. It is made clear that this amount would include solatium, loss of company as well as love and affection. Though disability certificates of the labourers, who have suffered injuries, are not available on record, but the court can take judicial

notice of the fact that since they have received injuries by high velocity projectile bullets, they were disabled and their earning capacity was bound to reduce. Their average age in the year 1991 was 30 to 40 years. They were earning ₹ 3,000/- per month in the year 1991. Their capacity to earn was reduced on account of physical disablement. Their annual future loss of earning would be affected at least by ₹ 9,000/- (₹ 750/- per month). Thus, by applying multiplier of 12, each of the injured workmen would be entitled to compensation of ₹ 1,08,000/-. The amount of compensation shall carry interest at the rate of 9% per annum from the date of incident i.e. 25.10.1991.

104. The appellants may not have the intention to cause death of the labourers, but they knew that firing at the unarmed mob would result in deaths. Thus, their conviction under Section 302 read with Section 149 IPC is converted to Section 304 Part II read with Section 149 IPC.

105. Accordingly, these appeals are partly allowed. Conviction of the appellants under Section 302 read with Section 149 IPC is converted to Section 304 II IPC read with Section 149 IPC. However, their conviction and sentence for the offences under Sections 148 and 307 read with Section 149 IPC are upheld. Conviction and sentence of appellants Narinder Pal Singh and Harcharan Singh for offence under Section 27 of the Arms Act are also upheld. The respondent – State is directed to pay compensation of Rs. 3,12,000/-, Rs. 3,36,000/-, Rs. 2,88,000/-, Rs. 3,60,000/-, Rs. 2,88,000/- and Rs. 2,88,000/-, to families of deceased persons, namely Maan Singh, Ram Gopal, Basant, Data Ram, Shri Krishan and Jai Ram, respectively. The respondent – State is also directed to pay compensation of ₹ 2,00,000/- to

family of each of deceased boys, namely Pappu and Narinder Kumar. The respondent – State is further directed to pay compensation of ₹ 1,08,000/- to each of the injured workmen, namely Bimal Kumar, Jai Parkash, Achhe Lal, Banke Lal, Sukhbir Singh, Shiv Kumar, Rameshwar, Laljeet, Jagdish Rai, Inderjit, Bhagwan Mishra, Mata Parshad, Ram Avtar, Maharaj Singh, Munish Pal, Ravinder and Nek Ram, within three months, after proper verification of the legal heirs of the deceased/workman. The amount of compensation shall carry interest at the rate of 9% per annum from the date of incident i.e. 25.10.1991.

106. Since Narinder Pal Singh, appellant No.1 in CRA-D-298-DB of 2014 died during pendency of the appeal, therefore, CRA-D-298-DB of 2014 qua him stands abated.

107. Appellant Hardam Singh in CRA-D-109-DB of 2014 is in custody. Appellant Piara Singh in CRA-D-146-DB of 2014 and appellant No.2 Harcharan Singh in CRA-D-298-DB of 2014 are on bail. The State is directed to produce appellants Hardam Singh, Piara Singh and Harcharan Singh before this Court on 26.09.2019, to be heard on quantum of sentence under Section 304 Part-II read with Section 149 IPC.

108. The police functionaries are saviors of law and not destroyers. It is the duty cast upon them to ensure while maintaining law and order and investigating the criminal cases that there is no transgression of fundamental and legal rights of the citizens/persons. The approach of police functionaries must change with the changing times and emphasis now should be on scientific investigation instead of adopting prehistoric, out dated methods of investigation. The investigation/interrogation must be psychological, rather

than physical. The police also resorts to these methods to get quick results instead of having patience and perseverance. It is, thus, the need of the hour that the police is to be re-modelised and there should be a separate wing for investigation and maintaining the law and order. The persons employed in a particular wing would acquire expertise and the criminal justice system would be benefited.

109. There should not be any distrust between the police and citizens and all out efforts are required to be made to bridge the gap between the police and the common citizen. It is equally true that the respondent-State is required to improve the conditions of service of police personnel to remove the stress in the entire police force. A high power committee is required to be constituted comprising highest ranked Officers to improve the conditions of service of police personnel by providing them time bound promotions, increments, incentives and housing etc. The police personnel, who improve their educational qualification and acquire specialized skills in F.S.L. and investigation, may be provided with one or two increments to improve efficiency in the police force. The police personnel should not be posted for more than eight hours duty at a stretch.

110. However, before parting with the judgment, we would like to observe that the police force also remained under stress. The police personnel had reached the spot in the morning and they were there till the firing started at 3.28 PM.

111. The Punjab Assembly has enacted an Act, called “The Punjab Police Act, 2007”, to implement the directions of the Supreme Court in Writ Petition (Civil) No. 310 of 1996, for governing the police in the State.

According to the Statement of Objects and Reasons, with the radical changes in the political, social and economic situation in the country after independence, a need has been felt to redefine the role, duties and responsibilities of the police to make it efficient, professional, effective, responsive, accountable and people-friendly so as to meet the emerging challenges of policing, good governance and human rights. The preamble of the Act reads as under :-

“to respond to the democratic aspirations of the people and to provide for the establishment, regulation and management of the police, redefine its role, duties and responsibilities and to enable it to function as an efficient, professional, effective, accountable, people friendly, service oriented and responsive agency, free from extraneous influences, accountable to law by taking into account the emerging challenges of policing, enforcement of rule of law, the concern for security of the State and the society, particularly the vulnerable sections and minorities, good governance, human rights and for the matters connected therewith or incidental thereto.”

Section 4 provides for organization and composition of police service. The role, functions, duties and responsibilities of the police are provided under Section 40. Social responsibilities of the police have been provided in Section 41. Section 46 provides that every police officer shall be considered to be always on duty, and may, at any time, be deployed in any part of the State or outside the State. Section 54 provides for constitution of the State Police Complaints Authority and the Divisional Police Complaints

Authority. Section 55 provides that the State Government shall designate an officer, not below the rank of an Assistant Inspector General of Police, to head a police welfare wing in the office of the Director General of Police to aid and advise him in the implementation of welfare measures for police personnel. Chapter X deals with general offences, penalties and responsibilities, including regulation of public assemblies and processions.

112. Ms. Anviti Chaturvedi, in her article “Police Reforms in India”, has made pertinent observations as under:-

“Police accounts for about 3% of government spending

While state police forces are responsible for maintaining law and order and investigating crimes, central forces assist them with intelligence and internal security challenges (e.g., insurgencies). Expenditure on police accounts for about 3% of the central and state government budgets.

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. Note that the United Nations recommended standard is 222 police per lakh persons. 86% of the state police comprises of constabulary. Constables are typically promoted once during their service, and normally retire as head constables. This could weaken their incentive to perform well.

Crime per lakh population has increased by 28% over the last decade (2005-2015). However,

convictions have been low. In 2015, convictions were secured in 47% of the cases registered under the Indian Penal Code, 1860. The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.

Constabulary related issues

Qualifications and training : The constabulary constitutes 86% of the state police forces. A constable's responsibilities are wide-ranging, and are not limited to basic tasks. For example, a constable is expected to exercise his own judgement in tasks like intelligence gathering, and surveillance work, and report to his superior officers regarding significant developments. He assists with investigations, and is also the first point of contact for the public. Therefore, a constable is expected to have some analytical and decision making capabilities, and the ability to deal with people with tact, understanding and firmness.

The Padmanabhaiah Committee and the Second Administrative Reforms Commission have noted that the entry level qualifications (i.e. completion of class 10th or 12th in many states) and training of constables do not qualify them for their role. One of the recommendations made in this regard has been to raise the qualification for entry into the civil police to class 12th or graduation. It has also been recommended that constables, and the police force in general, should receive greater training in soft skills (such as communication, counselling and leadership) given they need to deal with the public regularly.

Promotions and working conditions : The Second Administrative Reforms Commission has further noted that the promotion opportunities and working conditions of constables are poor, and need to be improved. Generally a constable in India can expect only one promotion in his lifetime, and normally retires as a head constable, which weakens his incentive to perform well. This system may be contrasted with that in the United Kingdom, where police officers generally start as constables and progress through each rank in order. Further, in India sometimes superiors employ constables as orderlies to do domestic work, which erodes their morale and motivation, and takes them away from their core policing work. The Commission recommended that the orderly system be abolished across states.

Housing : Importance of providing housing to the constabulary (and generally to the police force) to improve their efficiency and incentive to accept remote postings has also been emphasised by expert bodies, such as the National Police Commission. This is because in remote and rural areas, private accommodation may not be easily available on rent. Even in metropolitan areas, rents may be prohibitively high, and adequate accommodation may not be available in the immediate vicinity of the police stations affecting their operational efficiency.”

113. His Excellency the President was pleased to set up a Commission of Inquiry to be called the second Administrative Reforms Commission (ARC) to prepare a detailed blueprint for revamping the public

administration system. The Commission has made following apt observations:-

4.5 Self-esteem of Policemen

4.5.1 Nearly 87% of all police personnel are constables. The constable is the lowest level at which recruitment takes place. The educational requirement for selection of a constable is a school leaving certificate. A constable can generally expect only one promotion in a life time and normally retires as a head constable. An average constable has little hope of becoming a Station House Officer (SHO). The statutory powers of investigation are with the Station House Officer who is usually a sub-inspector in rural police stations, and an inspector in urban police stations. As a result, constables have become 'machines' carrying out the directions of their superiors with little application of mind or initiative. Constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers, and the emphasis on brawn rather than brain in most situations tend to brutalise and dehumanise policemen. A constable devoid of dignity, lacking opportunities for vertical mobility, constantly pilloried by superiors and politicians, often derided by the public and habituated to easy recourse to violence and force cannot generally be expected to sustain his/her self-esteem or acquire the professional skills to serve the citizens.

4.5.2 Apart from the constabulary, the police force is top heavy. There is over-crowding at the top with no real strength at middle-management levels. Recruitment in most states is at several levels – constabulary, sub-inspector, deputy superintendent of police, and the Indian Police Service. Several tiers of recruitment have diminished opportunities for promotion and the level of recruitment by the accident of an

examination often determines career progression, not competence, professionalism, integrity and commitment. Lateral entry to the police is not feasible, as rigorous training, experience, expertise and knowledge of peers and colleagues are vital to the police service. Since this is a sovereign function, no agency or experience outside government prepares outsiders for police work. At the same time, incentives for performance within the police agencies are feeble.

4.5.3 The Commission is of the view that police recruitment needs to be restructured significantly in order to enhance motivation and morale, professionalism and competence of the personnel. This would require empowerment of the cutting edge functionaries and commensurate upgradation of their calibre and skills.

4.6 Professionalisation, Expertise and Infrastructure

4.6.1 Effective crime investigation, competent law and order management and useful intelligence gathering demand high standards of professionalism and adequate infrastructural and training support. Specialised training facilities are vital to hone skills and constantly upgrade them. Forensic laboratories need to be established for every district or a group of districts – at least one per 3 to 4 million population. Only such well-endowed forensic facilities will help police agencies to meet the growing challenge of combating crime in a rapidly urbanising society. Strong communications support, state-of-the-art weapons, non-lethal, modern tools for riot control and a high degree of mobility are prerequisites for modern policing. Adequate resources, technology and manpower need to be deployed on a continuing basis to meet these requirements. Like national defence, internal security and public order cannot be compromised under any circumstances, if the integrity of the State and constitutional values are to be protected.

5.7 Empowering the ‘Cutting Edge’ Functionaries

5.7.1 As per the Indian Police Commission of 1902, the duties prescribed for the cutting edge functionary of police, i.e. the constable, were of a mechanical type, bereft of any discretion or application of mind. Today, the constable has to interact with people, and citizens expect to be treated with respect and sensitivity to their problems. There may be occasions when a constable has to take decisions without waiting for instructions from his superiors. As the constabulary is usually the first interface of the police with the public, any reform to be meaningful has to begin at this level.

5.7.2 The National Police Commission (1977) recommended major improvements in the service conditions of constables and suggested equating a constable to a skilled worker for determining his/her pay structure. The Padmanabhaiah Committee (2000) recommended that a candidate should have passed the 10th standard for being eligible to be appointed as a constable. It also suggested two years of rigorous induction training.

5.7.3 The PADC in the draft legislative formulation has recommended:

“Rank structure at the primary levels of Civil Police

1. The rank structure of Group ‘C’ posts in the Civil Police, in the ascending order, shall consist of Civil Police Officer grade II, Civil Police Officer Grade I, Sub-Inspector and Inspector.
2. The direct recruitment to group ‘C’ posts in the Civil Police, other than in the ministerial and technical cadres, after the coming into force of this Act, shall be made only to the ranks of Civil Police Officer Grade II and Sub-Inspector: Provided that the quota for direct recruitment to these two ranks shall be so fixed as to provide a fair balance between different ranks and prospects for promotion to eligible and meritorious officers at each

level within a period of 8 to 10 years.

3. Every Civil Police Officers Grade II will undergo three years intensive training before being posted to the Service as a stipendiary cadet, and will, upon successful competition of training, have a graduation degree in police studies. Their scales of pay and conditions of service shall therefore be commensurate with ranks in other services under the state, which require similar levels of educational qualifications and training.”

5.7.4 A serious and persisting malady in the civil police structure is the undue reliance on numbers - quantity, rather than the quality, of the personnel. The growing emphasis on the armed wing of the police as distinct from reliance on the civil police is an indicator of this. This distortion needs to be rectified. The allied aspect is the unthinking adherence to the lopsided police strength – majority of the total police strength in most states is composed of the armed wing and nearly 80-83% of the civil police is composed of personnel belonging to the ranks of constables and head constables. In other words, field level policing, whether urban or rural, is expected to be done through this lowest level of police.

5.7.5 The situation is further aggravated by the unsatisfactory living and working conditions and the demeaning manner in which constables are often treated by their superiors as well as politicians and the public. It is, therefore, not surprising that the self respect, morale and confidence with which they start their career, gets eroded in a very short time. Added to this is the continuation of the orderly system which reduces constables to the status of domestic servants. It would obviously be unrealistic to expect such a Force to be healthy, motivated, sensitive or citizen centric. As stated at the start of this chapter, reforms in the organisation of the police have to be the critical first step in bringing about a lasting and substantive change in

police practices and behaviour, especially at lower levels. The first step would be to upgrade the skills and training to the cutting edge level of the police service so that they are appropriately engaged to handle the challenges of present day policing. Further, the removal of the orderly system would also help the constabulary focus on their prime duty, policing. The orderly system should also be immediately abolished.

5.7.6 Presently, the constables are generally matriculates. A policeman today requires higher analytical skills, more initiative, broader thinking and better decision making capabilities. With increasing awareness among the citizens the emphasis in police is shifting from 'brawn to brain'. As a part of the reforms process, an immediate and important first step would be to restructure the present levels of recruitment to the police service on the civil police side. Instead of recruiting constables who are generally matriculates it would be better to recruit graduates at the starting point in the Civil Police and give them the nomenclature of Assistant Sub-Inspectors (ASI).

5.7.7 It is estimated that nearly 700 graduate Assistant Sub Inspectors could be recruited annually against a vacancy of about 1000 constables, and that too without any financial burden. These officers upon completion of rigorous induction training could be assigned to various branches. These ASIs could then expect to be promoted up to the level of DySPs over a period of time. This by itself would serve as an effective motivating factor for such personnel to maintain high levels of integrity, professionalism and personal behaviour.

5.7.8 The recruitment to the Armed Police units/Battalions may continue as at present but the procedure for recruitment should be so designed as to ensure that it is totally transparent and free from any stigma of corruption, casteism, gender, communalism and similar other biases. Their training will have to be drastically refashioned and imparted on a continuing basis.

5.7.9 An important aspect in the recruitment procedure of policemen and police officers is that it should be totally objective and transparent. To inspire confidence in all sections of society it is equally important that the composition of the police force should reflect the composition of the society they are required to serve. To achieve this, police service should have fair representation from all sections of society including women. It has been observed that unless recruitment camps are organised in a widely dispersed manner, certain sections of society may hesitate to come to the traditional recruitment centres. A more proactive approach is therefore required to attract persons from all sections of the society to join the police force.

5.7.10 Recommendations :

- a. The existing system of the constabulary should be substituted with recruitment of graduates at the level of Assistant Sub-Inspector of Police (ASI).
- b. This changeover could be achieved over a period of time by stopping recruitment of constables and instead inducting an appropriate number of ASIs.
- c. Recruitment of constables would, however, continue in the Armed Police.
- d. The orderly system should be abolished with immediate effect.
- e. The procedure for recruitment of police functionaries should be totally transparent and objective.
- f. Affirmative action should be taken to motivate persons from different sections of society to join the police service. Recruitment campaigns should be organised to facilitate this process.

5.8 Welfare Measures for the Police

5.8.1 Improvements in police performance are closely linked to the morale of policemen, particularly of cutting edge

functionaries, which in turn depends on their working environment and service conditions. Long working hours, tough working conditions, mechanical nature of job, inadequate welfare measures and insufficient housing means that the police officials are constantly under pressure, sapping their morale and motivation. Radical improvements in the recruitment, training, emoluments, working and living conditions are essential to improve their morale, reduce their frustration and increase their professionalism. Earlier in the Report, recommendations have been made for raising the qualifications for the entry level posts in police and undertaking recruitment at a higher level than at present and for abolition of the degrading orderly system. These combined with better working conditions, improved promotion prospects and job enrichment can go a long way towards improving morale and performance. In addition, priority has to be given to welfare measures such as better education for children, medical care, housing etc. so that there is an overall improvement in their working and living conditions.

5.8.2 The National Police Commission had divided welfare measures for the police into two broad categories, the first covering items such as pension/gratuity, medical facilities, housing etc. which are to be funded entirely by the government and the second comprising miscellaneous welfare measures such as recreational and entertainment facilities, welfare centres to provide work for members of the families, financial aid for their children etc. for which it suggested the institution of a welfare fund to be partly funded by the government and partly by the police personnel themselves.

5.8.3 Time bound measures for improving satisfaction levels among police personnel by provision of adequate housing and other welfare measures are required to be taken up on an urgent basis. Provision of adequate leave, at least for one month each

year, on the pattern of the armed forces would also help provide a safety valve for police personnel suffering from physical and psychological exhaustion due to trying working conditions to the District Magistrate and the State Government. However, accountability to the District Magistrate has eroded with the passage of time. The setting up of the National Human Rights Commission and the States Human Rights Commissions has brought in some element of accountability for human rights violations.

5.9.4 The National Police Commission went into the issue of departmental accountability at great length. They concluded that effectiveness of internal accountability systems is totally dependent on the determinants used for evaluating police performance. They suggested that a comprehensive set of determinants be used for evaluating police performance at various levels. As regards complaints against the police, the National Police Commission recommended that all complaints should be dealt with by the police department. The Padmanabhaiah Committee also endorsed the view of the National Police Commission but made a distinction that where a complainant is not satisfied with the action taken by the police, he should have access to an independent Complaints Authority. The Committee recommended the Constitution of a non statutory authority to be headed by the District Magistrate with an Additional Sessions Judge, the Superintendent of Police and an eminent citizen as members.

5.9.5 The Padmanabhaiah Committee also suggested the constitution of an independent Inspectorate of Police. Attention was drawn to Her Majesty's Inspectorate of Constabulary which has been functioning very effectively in the United Kingdom and advises the Minister on the efficiency of the police force.

5.9.6 The Supreme Court in **Writ Petition (Civil) No.310 of**

1996, Prakash Singh and others vs. Union of India has directed the constitution of State and District Complaints Authorities.

5.9.7 The PADC has suggested that in addition to the already existing mechanisms, accountability of the police should be further ensured through the Police Performance and Accountability Commission and the District Accountability Authority. The PADC has recommended the setting up of a State Police Accountability Commission headed by a retired High Court Judge. This Commission would enquire into allegations of serious misconduct against police personnel. It has also been suggested that there should be a District Accountability Authority to monitor departmental enquiries into cases of complaints of misconduct against police personnel.

5.9.8 The Commission has analysed the systems prevailing in other countries. In the UK, the first statutory complaints system was introduced in England and Wales when the Police Act, 1964 granted Chief Officers sole responsibility for taking action on complaints against the police. The Police Act, 1976 created the Police Complaints Board (PCB), an independent body based in London with responsibility for reviewing completed investigations of complaints. The PCB did not have any investigative powers, but it could review an investigation and ask a Chief Officer to commence disciplinary proceedings, which would be heard by a disciplinary tribunal consisting of two PCB members. As the PCB was not found to be effective enough, the Police and Criminal Evidence Act, 1984 constituted the Police Complaints Authority (PCA). The PCA's structure and responsibilities were essentially the same as the PCB but the principal change was that its members could supervise police investigations into complaints. A mechanism for local resolution of less serious complaints was also provided. In May

2000, the government started consultation on a new complaints system for complaints against the police and a consultation document setting out the emerging framework – ‘Complaints against the Police - Framework for a New System’ – was published. This culminated in the Police Reform Act, 2002. Section 9 of the Police Reform Act, 2002 established the Independent Police Complaints Commission. Its functions include:

- “(a) the handling of complaints made about the conduct of persons serving with the police;
- (b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;
- (c) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) are investigated or otherwise handled and dealt with.”

5.9.9 The South African Police Act also established an Independent Complaints Directorate. The New York City Police has an independent Civilian Complaints Review Board. New South Wales in Australia passed the Police Integrity Commission Act in 1996. The principal objective of the Act was “to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct”.

5.9.10 The Prime Minister Dr. Manmohan Singh, while addressing Superintendents of Police on 1st September, 2005, stated that:

- “The Home Minister may also consider setting up an independent oversight mechanism to handle complaints against police misconduct.”

5.9.11 In the model Act suggested by PADCC, the District Accountability Authority has to be constituted to monitor

departmental enquiries into cases of complaints of misconduct against police personnel. This is not quite in line with what has been directed by the Supreme Court. The Supreme Court has directed that the recommendations of the Complaint Authorities at the District and the State levels shall be binding. In its Report on Ethics in Governance, the Commission has recommended the constitution of a Local Bodies Ombudsman to look into complaints against officials of local bodies. Since the Local Bodies Ombudsman would have to investigate complaints against all the urban and rural local bodies and their officials, it may not be desirable to burden it any further. A separate District Police Complaints Authority should therefore be constituted for allegations against the police. This may be constituted for a district or a group of districts. The District Police Complaints Authority should not inquire into complaints relating to corruption which come under the purview of Lok Ayukta but should focus on other types of public grievances against the police such as non registering of complaints, general highhandedness, etc. The District Police Complaints Authority should have an eminent citizen as its Chairperson, with an eminent lawyer and a retired government servant as its members. The Chairperson and Members of the District Police Complaints Authority should be appointed by the State Government in consultation with the Chairperson, State Human Rights Commission or with the State Lok Ayukta. A government officer should be appointed as Secretary of the District Police or abuse of power against the police officers up to the rank of Deputy Superintendent of Police. It should exercise all the powers of a civil court. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should by and large accept the recommendations of the District Police Complaints Authority.

5.9.12 A State Police Complaints Authority (SPCA) should be constituted to look into cases of serious misconduct by the police. It should also look into complaints against officers of the rank of Superintendent of Police and above. The State Police Complaints Authority should have a retired High Court Judge as Chairman. Nominees of the State Government, the State Human Rights Commission, State Lok Ayukta, the State Womens' Commission, and an eminent human rights activist should be the members of the Complaints Authority. The Chairperson and the eminent human rights activist should be appointed by the State Government based on the recommendations of the State Human Rights Commission. In case the State Human Rights Commission has not been constituted, then the State Lok Ayukta may be consulted. A government officer should officiate as Secretary of the Authority. It should have the authority to ask any agency to conduct an enquiry or do the inquiry itself. It should also be empowered to enquire into or review a case which is before any District Police Complaints Authority if it feels that it is necessary to do so in public interest. The State Authority should also monitor the functioning of the District Police Complaints Authorities.

5.9.13 In order to prevent frivolous and vexatious complaints, it may be provided that if upon an enquiry it is found that the complaint was frivolous or vexatious, then the Complaints Authority should have the power to impose a reasonable fine on the complainant.

5.9.14 The Complaints Authority proposed above would be effective only if they are easily accessible to the aggrieved person. The procedure for lodging a complaint should be made very simple. Technology provides various solutions for this. The filing of complaints could be 'web-enabled'. As telephone connectivity is more widely available than internet, the

Complaints Authority should have facilities for recording complaints over telephone also. This could even be automated through the use of Interactive Voice Recorder (IVR) systems.

5.9.15 Recommendations :

- a. A District Police Complaints Authority should be constituted to enquire into allegations against the police within the district. The District Police Complaints Authority should have an eminent citizen as its Chairperson, with an eminent lawyer and a retired government servant as its Members. The Chairperson and Members of the District Police Complaints Authority should be appointed by the State Government in consultation with the Chairperson of the State Human Rights Commission. A government officer should be appointed as Secretary of the District Police Complaints Authority.
- b. The District Police Complaints Authority should have the powers to enquire into misconduct or abuse of power against police officers up to the rank of Deputy Superintendent of Police. It should exercise all the powers of a civil court. The Authority should be empowered to investigate any case itself or ask any other agency to investigate and submit a report. The Disciplinary Authorities should normally accept the recommendations of the District Authorities.
- c. A State Police Complaints Authority should be constituted to look into cases of serious misconduct by the police. The State level Authority should also look into complaints against officers of the rank of Superintendent of Police and above. The State Police Complaints Authority should have a retired High Court Judge as Chairperson and nominees of the State Government, the State Human Rights Commission, the

State Lok Ayukta, and the State Women Commission. An eminent human rights activist should be also be the member of the Complaints Authority. The Chairperson and the Member of the Authority (eminent human rights activist) should be appointed by the State Government based on the recommendations of the State Human Rights Commission. (In case the State Human Rights Commission has not been constituted, then the State Lok Ayukta may be consulted). A government officer should officiate as the secretary of the Authority. The Authority should have the power to ask any agency to conduct an enquiry or enquire itself. The Authority should also be empowered to enquire into or review any case of police misconduct, which is before any District Police Complaints Authority, if it finds it necessary in public interest to do so.

d. It should be provided that if upon enquiry it is found that the complaint was frivolous or vexatious, then the Authority should have the power to impose a reasonable fine on the complainant.

e. The State Police Complaints Authority should also monitor the functioning of the District Police Complaints Authority.

f. The Complaint Authorities should be given the powers of a civil court. It should be mandated that all complaints should be disposed of within a month.

5.10 An Independent Inspectorate of Police

5.10.1 At present, the departmental hierarchy is responsible for ensuring that the police functions efficiently. However, the system of rigorous inspection of police stations and the functioning of police officers by higher departmental officers, has, over the years, become a routine ineffective exercise. Cases like ‘Nithari’ bring to the fore the weaknesses of

departmental inspection mechanisms. The Commission would reiterate the need for effective internal inspections. It is however recognised that routine inspections would not lead to substantial systemic changes as needed from time to time. In some countries like the UK an independent Inspectorate of Police has been constituted to promote efficiency and effectiveness of policing and also to ensure that agreed standards are achieved and maintained. The Padmanabhaiah Committee recommended the setting up of an independent Inspectorate of Police. The Commission feels that there are advantages in setting up of an independent Inspectorate of Police in each state under the supervision of the State Police Performance and Accountability Commission.

5.10.2 At present, though the criminal laws are uniform throughout the country, there are variations in police functioning from state to state. Though some variations are necessary considering the local conditions, there should also be some common standards for functions of police, especially the quality of services provided by them. The task of identifying these common standards could be entrusted to the Bureau of Police Research and Development. These standards could then be updated regularly in the light of experience gained and adopted as the benchmark for inspections.

5.10.3 The recent incidents of death in stage-managed police encounters have once again underscored the need for a strong accountability mechanism. The proposed Complaints Authority, no doubt, would investigate any complaints in this regard, however, in order to totally eliminate this unacceptable practice, a professional accountability mechanism should also be institutionalised. Therefore all cases of deaths in encounters, irrespective of whether a complaint has been made or not, should be inquired into by the proposed Inspectorate as an ongoing exercise to ensure police accountability. The

Inspectorate of Police would submit its inquiry report to the PPAC and also to the SPCA. The SPCA should use the report as an input, in case it is conducting an inquiry in to any such incident.

5.10.4 Recommendations :

- a. In addition to ensuring effective departmental inspections, an Independent Inspectorate of Police may be established under the supervision of the Police Performance and Accountability Commission to carry out performance audit of police stations and other police offices through inspections and review of departmental inspections. It should render professional advice for improvement of standards in policing and also present an annual report to the Police Performance and Accountability Commission.
- b. For all cases of deaths during 'encounters' the Independent Inspectorate of Police should commence an enquiry within 24 hours of the incident. The Inspectorate should submit its report to the PPAC and the SPAC.
- c. The working of the Bureau of Police Research and Development needs to be strengthened by adequate financial and professional support, so that it could function effectively as an organization for inter alia analysis of data from all parts of the country and establish standards regarding different aspects of the quality of police service.

5.11 Improvement of Forensic Science Infrastructure Professionalisation of Investigation

5.11.1 As pointed out earlier, India, which had the first fingerprinting laboratory in the world in 1897, has proportionately fewer forensic laboratories than other developed countries. Inadequate infrastructure leads to transporting of case material to distant places, resulting in

delays and giving scope for tampering, corruption, and incompetence. As a result, there is over-dependence on either oral evidence which can be unreliable (witnesses are often bought or coerced) or recourse to brutal third degree methods to extract confessions. Finally, the absence of legal counsel at the stage of crime investigation is leading to appallingly low rates of convictions.

5.11.2 Forensic science which is highly advanced in developed countries is not adequately used by our police in investigation of crime. A large number of cases are investigated based on admissions and confessions by the accused often extracted under duress. In the long run, most such cases result in acquittal besides causing violation of human rights and brutalising the police on the one hand and letting go of the criminals on the other. Optimum utilisation of the tools of forensic sciences can lead to better investigation of crimes on the one hand and minimisation of abuse of human rights on the other.

5.11.3 The Padmanabhaiah Committee went into this aspect at great length. It observed: "There are four issues relating to forensic science, which needs to be examined. The first one is how to build world class forensic science facilities. The second is how to ensure that the police use the forensic science facilities in criminal investigation. The third one is to ensure that the forensic reports achieve a reputation for integrity, impartiality and accuracy of their findings. The fourth one is to see that the forensic science reports are available very quickly".

5.11.4 A Core Group was constituted by the National Human Rights Commission to make a comprehensive examination of all aspects of forensic science services in India and to make appropriate recommendations. The Core Group, which submitted its Report in 1999, has also made several recommendations on effective use of forensic science in the

criminal justice delivery system. The Core Group examined institutional, legal, personnel, financial and technical issues and made comprehensive recommendations on each one of these.

5.11.5 With regard to the organisation of the forensic science institutions, the Core Group stated that the structure within these organisations is very hierarchical, compartmentalised, insensitive, bureaucratic and rigid and that the internal culture is influenced by the police environment. The Core Group observed that in most states, the forensic organisations are a part of the police set up and this affects their scientific work. They are also woefully short of funds and qualified staff. All this coupled with indiscriminate references made by investigating officers has led to a large pendency at the forensic laboratories.

5.11.6 The Core Group also noted the legal lacunae in the use of forensic science services in investigation and trial. It pointed out that the CrPC and the Indian Evidence Act do not provide for mandatory collection, preservation, examination of forensic material, and for its appropriate legal status in the criminal justice process.

5.11.7 The Commission has examined the report of the Core Group and agrees with it. Based on the recommendations made by the Core Group, the Commission makes the following recommendations:

5.11.8 Recommendations :

- a. There is need to set up separate National and State Forensic Science Organisations as state-of-the-art scientific organizations. At the state level these organisations should function under the supervision of the Board of Investigation.
- b. There is need to expand the forensic facilities and upgrade them technologically. Every district or a group

of districts having 30 to 40 lakhs population should have a forensic laboratory. This should be achieved over a period of five years. Government of India should earmark funds for this purpose for assisting the states under the police modernisation scheme. All the testing laboratories should be accredited to a National Accreditation Body for maintaining quality standards.

c. The syllabus of MSc Forensic Science should be continuously upgraded in line with international trends.

d. Necessary amendments should be effected in the CrPC and other laws to raise the level and scope of forensic science evidence and recognize its strength for criminal justice delivery.

5.12 Strengthening Intelligence Gathering

5.12.1 Intelligence is clearly one of the most important inputs for maintaining public order. In the states, intelligence gathering is done by the Special Branch (Intelligence Wing) of the police and the regular police stations. It is generally observed that the intelligence gathering efforts are devoted mainly to gathering information about major law and order problems, namely, likely agitations from students, labour unions, social and communal groups etc. Experience indicates that adequate attention is not paid to collection of intelligence relating to commission of crimes. It is imperative that the intelligence gathering machinery should give adequate attention to prevention of crimes also.

5.12.2 Even today, the basic source for all conceivable information remains the police station, although there are Special Branches in all the states for gathering intelligence. Indeed, collection of intelligence is the responsibility of all policemen. Information is collected through various sources - the beat constable, the traffic policemen, field visits, interaction with officials of other departments, study of FIRs, use of

informants etc. Nevertheless, due to pressure of law and order duties, such efforts remain inadequate. Pressure of work – law and order duties - has considerably slackened such efforts in intelligence gathering.

5.12.3 The system of the beat police which worked well in the past has fallen into disuse and in big cities patrolling is done mainly in vehicles. The beat police apart from giving a sense of security to the citizens, was also an important source of information. The Commission feels that this system needs to be restored and strengthened.

5.12.4 Moreover, with the constitution of specialised wings in each state, the police stations sometimes feel that collection of intelligence is no longer their responsibility. It has also been observed that often the information collected as ‘intelligence’ is about an event which has already taken place. The Padmanabhaiah Committee summarised its observation about intelligence as follows:

“Presently, the intelligence apparatus is not integrated with well defined hierarchical or collateral linkages. It is neither obligatory on the part of the state police to share intelligence with other intelligence gathering agencies or vice-versa, nor mandatory to act upon it with seriousness that it deserves. The existing amorphous arrangements which heavily rely on personal equations and subjective appreciation needs to be replaced by professionally worked out institutional arrangements.”

5.12.5 In recent years, substantial measures have been taken to strengthen intelligence gathering and coordination mechanisms have been set up at various levels. The Commission would however like to emphasise that the police station and its functionaries should be the prime source for gathering intelligence. Rapid advancements in technology should be fully

exploited for intelligence gathering. Also a mechanism for fixing accountability of intelligence officials and other executive officials who utilise such intelligence, needs to be evolved.

5.12.6 Recommendations :

- a. The intelligence gathering machinery in the field needs to be strengthened and at the same time, made more accountable. Human intelligence should be combined with information derived from diverse sources with the focus on increased use of technology. Adequate powers should be delegated to intelligence agencies to procure/use latest technology.
- b. Intelligence agencies should develop multi-disciplinary capability by utilising services of experts in various disciplines for intelligence gathering and processing. Sufficient powers should be delegated to them to obtain such expertise.
- c. Intelligence should be such that the administration is able to use it to act in time by resorting to conflict management or by taking preventive measures.
- d. Instead of monitoring public places by posting a large number of policemen it would be economical as well more effective if devices like video cameras/CCTVs are installed in such places.
- e. The beat police system should be revived and strengthened.
- f. Informants giving information should be protected to keep their identity secret so that they do not fear any threat to life or revenge. However, they could be given a masked identity by which they could claim their reward at an appropriate time and also continue to act as informants as the situation develops.
- g. In case of major breakdown of public order, the State

Police Complaints Authority should take appropriate action to fix responsibility on the police officers for lapses in acting upon intelligence or on the intelligence officers in case there has been a failure on their part.

5.13 Training of the Police

5.13.1 Recruitment to the Police is done at four levels - viz., the constables, Sub Inspectors (SI), Deputy Superintendent of Police (DySP) and Assistant Superintendent of Police (ASP). Recruitment to the ranks of Constable, SI, DySP are done by the states concerned. Normally the constables and SIs are recruited by the Department, DySPs are recruited by the State Public Service Commission {ASPs (IPS) are recruited by the UPSC}.

5.13.2 Training has by and large been a neglected area so far as the large number of subordinate functionaries are concerned. In 1971, a Committee on Police Training was constituted. This Committee came to the conclusion that police training had been badly neglected over the years and training arrangements left much to be desired.

5.13.3 Often the State Police Training Schools where a large majority of policemen undergo training are ill equipped, starved of funds and staffed by unwilling instructors. Furthermore, training methodologies are often outdated and focus is more on discipline and regimentation while attitudinal and behavioural improvements are relegated to the background.

5.13.4 Training is important not only for building capacity but also for bringing attitudinal change. The capacity of the police to go beyond their individual economic and social background, to become aware, thinking, humanitarian and sensitive to weaker sections, can be inculcated by continuing capacity building measures. While the Commission does not wish to go into the technical details of training, it would like to emphasise its importance in police functioning.

5.13.5 Recommendations :

- a. Deputation to training institutions must be made more attractive in terms of facilities and allowances so that the best talent is drawn as instructors. The Chief of Training in the state should be appointed on the recommendation of the Police Performance and Accountability Commission.
- b. The instructors should be professional trainers and a balanced mix of policemen and persons from other walks of life should be adopted.
- c. Each state should earmark a fixed percentage of the police budget for training purposes.
- d. For each level of functionary, a calendar of training for the entire career should be laid down.
- e. There should be common training programmes for police, public prosecutors and magistrates. There should also be common training programmes for police and executive magistrates.
- f. Training should focus on bringing in attitudinal change in police so that they become more responsive and sensitive to citizens' needs.
- g. All training programmes must conclude with an assessment of the trainees, preferably by an independent agency.
- h. Modern methods of training such as case study method should be used.
- i. Impact of training on the trainees should be evaluated by independent field studies and based on the findings the training should be redesigned.
- j. All training programmes should include a module on gender and human rights. Training programmes should sensitise the police towards the weaker sections.

5.14 Police and Human Rights

5.14.1 Human rights issues have been placed centre stage in the last decade or so in discussions on police reforms. The General Assembly of the United Nations Organisation adopted the Universal Declaration of Human Rights on 10th December, 1948. India became a signatory to the International Convention on Economic, Social and Cultural Rights (ICESCR) and the International Convention on Civil and Political Rights (ICC PR) in 1966. The National Human Rights Commission (NHRC) was established on 12th October, 1993 as mandated by the Protection of Human Rights Act, 1993.

5.14.2 In recent years, reports of occurrence of human rights violations have become increasingly related to counterinsurgency and counter-terrorism activities of the law enforcement authorities. That terrorism has become a serious threat to national integrity, national security, rights of the citizens and social harmony cannot be over-emphasised. The National Human Rights Commission has laid stress on both aspects. It accepts that “A man in “khaki” does not shed off his basic human right to life on wearing “khaki” – violation of his human rights at the hands of terrorists is as much condemnable as the assault on human rights of other citizens” (Para 3.13, Annual Report, 2004-2005, NHRC). But it also reiterates the view of the Supreme Court of India in D.K. Basu vs the State of West Bengal [1997(1) SCC416]: “Challenge of terrorism must be met with innovative ideas and approach. State terrorism is no answer to combat terrorism. State terrorism would provide legitimacy to ‘terrorism’. That would be bad for the State, the community and above all for the Rule of Law. The State, therefore, must ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. That the terrorist has violated the human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of his

human rights except in the manner permitted by law”.

5.14.3 Other matters related to policing and human rights are concerned with custodial deaths, encounter deaths and torture. The NHRC has stated in its Annual Report for 2004-2005 that 74,401 cases were registered in the Commission during that year of which 1500 cases related to intimations of custodial deaths, 4 cases of custodial rapes and 122 related to police encounters (para 4.3).

5.14.4 The NHRC has made it very clear that “with every passing year, the evidence before the Commission mounts that there must be major police reforms in the country if the human rights situation is to be improved...” It has stressed that modernisation per se would not lead to redressal of the situation. The most important element, in its view, is insulating the investigation work of the police from ‘extraneous influences’ and putting a stop to arbitrary transfers of police officials which is used to weaken the capacity of the police to function without fear or favour. In fact, in the light of complaints received about police wrong doings and their complicity in the violation of human rights, it has urged the Union and State Governments to act with determination and implement the reforms recommended by it.

5.14.5 The Commission agrees with the views of the NHRC. The Commission has already examined the issues identified by the NHRC in the foregoing paragraphs. The Commission has recommended a structure so as to insulate police from unwarranted interference; the emphasis on professional investigation and use of forensic science would dissuade investigating officers from taking recourse to coercive methods; the emphasis on training is likely to bring about an attitudinal change in police; the complaints authorities would provide an effective grievance redressal mechanism against police high handedness. All these measures would go a long

way in ushering a culture of upholding human rights by all enforcement agencies. The Commission would also emphasise that the human rights of the victims and the security agencies should be given equal importance.

5.15 Community Policing

5.15.1 Community Policing has been defined as: “Community Policing is an area specific proactive process of working with the community for prevention and detection of crime, maintenance of public order and resolving local conflicts and with the objective of providing a better quality of life and sense of security”.

5.15.2 According to David H Bayley, community policing has four elements:

- (1) Community - based crime prevention;
- (2) Patrol deployment for non emergency interaction with the public;
- (3) Active solicitation of requests for service not involving criminal matters; and
- (4) Creation of mechanisms for grassroots feedback from the community.

5.15.3 The basic principle underlying community policing is that ‘a policeman is a citizen with uniform and a citizen is a policeman without uniform’. The term ‘Community Policing’ has become a buzzword, but it is nothing new. It is basically getting citizens involved in creating an environment which enhances community safety and security.

5.15.4 Community policing is a philosophy in which the police and the citizens act as partners in providing security to the community and controlling crime. It involves close working between the two with police taking suggestions from people on the one hand and using the citizens as a first line of defence on the other.

5.15.5 Many states in India have taken up community policing

in some form or the other. Be it 'Maithri' in Andhra Pradesh, 'Friends of Police' in Tamil Nadu, Mohalla Committees in Bhiwandi (Maharashtra), there have been several success stories from all over the country. Without going into details of each one of these, the Commission would like to lay down a few principles which should be followed in community policing:

- It should be clearly understood that community policing is a philosophy and not just a set of a few initiatives.
- The success of community policing lies in citizens developing a feeling that they have a say in the policing of their locality and also making the community the first line of defence. Community policing should not become a mere 'public relations' exercise but should provide an effective forum for police-citizen interaction.
- Interaction with people should be organised through 'community liaison groups' or citizen's committees at different levels. It should be ensured that these groups are truly representative. The idea of community policing would be a success if it is people driven rather than police driven.
- Convergence with activities of other government departments and organisations should be attempted.

5.16 Gender Issues in Policing

5.16.1 In spite of the constitutional, legal and institutional provisions, women continue to be victims of crime and oppressive practices throughout their life. The National Policy on Empowerment of Women acknowledges that there still exists a wide gap between the goals enunciated in the Constitution, in legislation, policies, plans and programmes, on the one hand and the situational reality of the status of women in India on the other. It notes that major gender gaps exist in key areas affecting women empowerment and well-being, e.g.

mortality rates, sex ratio and literacy. It also states that a major manifestation of gender disparity is domestic and societal violence against women. The high rate of incidence of crimes is evident from the statistics published by the National Crime Records Bureau. Even more alarming are the lower rates of conviction in cases of offences against women than in case of other offences.

5.16.2 The Centre for Social Research undertook a study to assess how effectively police training academies in four states have incorporated gender sensitisation into the training programmes and have made a number of excellent recommendations. Briefly, the main recommendations are that gender training should be given as much time as other training and all training should have a gender component. They should also be specific to the special gender requirements of the States/regions (for example, trafficking of women in Andhra Pradesh, female foeticide and dowry deaths in large parts of North and West India, etc). It further recommended that the National Police Academy should formulate a gender policy for police training. It was highlighted that there are five essentials for a successful gender strategy for the police: education, training, awareness campaigns, research analysis and annual audits. These need to be properly evaluated and enforced.

5.16.3 Various surveys and research studies have revealed that women are often reluctant to approach the police in matters relating to violence/cruelty against them. Even when a case has been registered, low conviction rates point to deficiencies in the investigation and the prosecution. The Tenth Plan sought to address this problem in a number of ways:

- i) strict enforcement of all relevant legal provisions and speedy redressal of grievances with a special focus on violence and gender-related atrocities;
- ii) measures to prevent and punish sexual harassment at

the work place, protection for women workers in the organised/un-organised sectors and strict enforcement of relevant laws such as Equal Remuneration Act, 1976 and Minimum Wages Act, 1948;

iii) regular review of crimes against women, their incidence, prevention, investigation, detection and prosecution etc. by the Centre and States at district level;

iv) strengthening of Women's cells in Police Stations, Women Police Stations, Family Courts, Mahila Courts, Counselling Centres, Legal Aid Centres; and

v) Widespread dissemination of information on all aspects of legal rights, human rights and other entitlements of women.

5.16.4 Since the police is the primary agency of the criminal justice system which protects human rights, it is essential to sensitise police personnel to gender issues. A well designed gender training, which internalises responses, can play a major role in changing mindsets, biases and entrenched attitudes.

5.16.5 Another aspect of gender disparity of the criminal justice system is the low representation of women in all wings and especially the police. It is estimated that women constitute only about 2% of the civil police. This situation needs to be redressed through affirmative actions. The National Commission on Women has made various recommendations regarding the changes to be made in different laws. They have also made suggestions about sensitizing the entire criminal justice system. While the reform of the criminal justice system as suggested in this Report would help in making investigation more professional and help the victims including women to get justice, the Commission feels that police at all levels needs to be sensitized on gender issues.

5.16.6 Recommendations :

a. The representation of women in police at all levels

should be increased through affirmative action so that they constitute about 33% of the police.

b. Police at all levels as well as other functionaries of the criminal justice system need to be sensitised on gender issues through well structured training programmes.

c. Citizens groups and NGOs should be encouraged to increase awareness about gender issues in society and help bring to light violence against women and also assist the police in the investigation of crimes against women.

114. The National Police Commission (NPC) was constituted by the Govt. of India in 1977 with wide terms of reference covering the police organization, its role, functions, accountability etc. The Committee has submitted its eight reports as under:-

First Report:

Complaints against the police:

According to the NPC, any arrangement for inquiry into complaints against police should be acceptable both to police and public as fair and just. The Commission therefore suggested arrangements, which would include inquiries conducted by departmental authorities and those conducted by an independent authority outside the police. The Commission felt that a large number of complaints against police should be looked into and disposed off by the supervisory ranks in the police hierarchy. The Commission however recommended that a judicial inquiry should be made mandatory in the following categories of complaints against the police:

- * alleged rape of a woman in police custody;
- * death or grievous hurt caused while in police custody; and
- * death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

The judicial inquiry should be held by an Additional Session's Judge nominated for this purpose in every district by State Government in consultation with the High Court. He will be designated as the District Inquiry Authority (DIA) and be assisted by an assessor. The DIA shall send the report of the inquiry to the State Government. It will be mandatory on the part of the government to publish the report and decisions taken thereon within two months of receipt of the report.

The DIA shall also serve as an independent authority to oversee the ultimate disposal of complaints dealt with departmentally. To oversee the satisfactory implementation of the entire scheme, a Police Complaint Board should be set up the state level.

Second Report :

Appointment of the Criminal Justice Commission :

According to the NPC, the police cannot achieve complete success in their work unless all wings of the criminal justice system operate with simultaneous efficiency. It is therefore necessary to set up a body, which would comprehensively monitor the performance of all agencies and apply corrective measures from time to time. The existing Law Commission may be enlarged to function as a Criminal Justice Commission on a statutory basis. Such arrangements at the centre should be supported by similar arrangements at the state level.

Role of Police:

The basic role of the police is to function as a law enforcement agency and render impartial service to law, without any heed to wishes, indications or desires expressed by the government which either come in conflict with or do not conform to the provisions contained in the constitution or laws. This should be spelt out in the Police Act. The police should have duly recognised service-oriented role in providing relief to people in distress situations. They should be trained and equipped to

perform the service oriented functions.

Political Interference in Police Work:

In the existing set-up, the police function under the executive control of the state government. According to the Commission, the manner in which political control has been exercised over the police in this country has led to gross abuses, resulting in erosion of rule of law and loss of police credibility as a professional organisation. The threat of transfer / suspension is the most potent weapon in the hands of the politician to bend the police down to his will. The Commission recommended that the superintendence of the state government over the police should be limited to ensure that police performance is in strict accordance with law. In the performance of its tasks, the police should be subject to overall guidance from the government which should lay down broad policies for adoption in different situations. There should however be no instructions in regard to actual operations in the field. In regard to investigation work, in any case, the police are beyond any intervention by the executive or politicians.

To help the state government discharge their superintending responsibility in an open manner under the framework of law, a State Secretary Commission should be setup through law in each state. The State Security Commission should:

- * lay down broad policy guidelines and directions for the performance of preventive tasks and service-oriented functions by the police;
- * evaluate the performance of the State Police every year and present a report to the State Legislature;
- * function as a forum of appeal to dispose of representations from officers regarding their being subjected to illegal orders and regarding their promotions; and

* generally keeping in review the functioning of the police in the state.

Statutory Tenure of Service:

The chief of police should be assured of a fixed tenure of office. The tenure may be for four years or for a period extending up to retirement, whichever is earlier. The removal of the chief of police from his post before the expiry of the tenure should require approval of the State Security Commission.

Selection of Chief of Police:

The head of the police force should be selected from a panel of three IPS officers of that state cadre. The panel should be prepared by a committee headed by the Chairman of the Union Public Service Commission.

Transfer/Suspension Orders:

Police officers should be effectively protected against whimsical and mala fide transfer/suspension orders. There should be a provision in the Police Act, specifying the authorities competent to issue such orders regarding different ranks. Any such orders passed by any authority other than those specified in the Act will be rendered null and void.

Third Report:

Police and the Weaker Sections:

Some important recommendations made by the NPC about police response towards weaker sections of society are summarised below:

The NPC has recommended the establishment of special investigation cell in the police department at State level to monitor the progress of investigation of cases under the Protection of Civil Rights Act or other atrocities against Scheduled Castes and Tribes. A composite cell may be constituted at the district level under the Sub-Divisional Officer to inquire into complaints emanating from scheduled

Castes/Tribes, particularly those relating to lapses in administrative measures meant for their relief.

An important cause for dissatisfaction of weaker sections of society is that the police sometimes do not take cognizance of their complaints of ill treatment at the hands of upper castes on the ground that complaints are non cognizable and therefore cannot be investigated by them without orders from a magistrate. The NPC has recommended that section 155 of the Code of Criminal Procedure should be suitably amended to facilitate appropriate and effective police response to non cognizable complaints in two categories of cases: (i) to protect a member of the weaker sections from exploitation and injustice, or (ii) to prevent a possible breach of public peace that might result from absence of effective action on complaint of a non cognizable offence.

A comprehensive legislation should be enacted setting out the procedure for the allotment of land to landless poor. Police officers from the local police station should be associated with act of handing over possession of land to the landless and a brief record of this should be kept in the police station records.

Postings of Officers:

The postings of officers in charge of police stations should be the exclusive responsibility of the district Superintendent of Police. The Chief of Police should be exclusively responsible for selecting and posting Superintendents of Police in charge of districts.

Guidelines for Avoidance of Vexatious Arrests:

Presently the powers of the arrest available to the police give ample scope for harassment and humiliation of persons, prompted by mala fide considerations. In actual practice, several persons who ought to be arrested are let free on account of political influence or other considerations, while harmless persons who need not be arrested at all are often arrested and

even remanded to police custody on inadequate grounds. Some mala fide arrests get exposed on habeas corpus petitions filed in High Courts but such exposures are rare compared to the large number of unjustified arrests that take place all the time. NPC has recommended very strict guidelines for making arrests by the police, which should be strictly observed in day-to-day administration by the senior supervisory ranks. However, the State governments are yet to make firm arrangements down the line for observing these guidelines in day-to-day police work. The NPC also recommended that sections 2(c) and 2(1) of the Code of Criminal Procedure should be amended to remove the emphasis on arrest in the definition of cognizable and non cognizable offences and section 170 of the Code of Criminal Procedure should be amended to remove the impression that it is mandatory to make an arrest in non-bailable cases.

Guidelines regarding use of Handcuffs:

- * The threat of putting handcuffs on persons under arrest is another source of corruption and harassment. The following guidelines must be observed:
- * No person shall be handcuffed who, by reason of age, sex or infirmity can be kept in custody without handcuffs.
- * No person arrested on a bailable offence shall be handcuffed, unless for some special reasons, it is believed that he is likely to escape.
- * In cases under judicial custody, court's instructions should be obtained before handcuffing the accused.
- * Under trial prisoners and other accused persons should not be handcuffed and chained unless there is reasonable expectation that such persons will use violence or attempt to escape. The police escort must be sufficiently strong to prevent escape.
- * Whenever any accused is handcuffed, the fact and

reasons should be stated in the Sentry Relief Book.

* In no case should prisoners or accused persons, who are aged and bed-ridden in hospitals, or women or juvenile or civil prisoners, be handcuffed or fettered.

Provision of Imprest Money to Police Station:

The Commission noted the non-availability of any imprest money in a police station to meet expenditure on several legitimate needs of the station. It recommended that police stations should be provided with an adequate imprest amount to meet the contingent expenditure in day-to-day work. Adequate funds should be provided at station level to eliminate causes of corruption, which often engulf even the honest officers.

Fourth Report:

Registration of FIR:

Victims of crimes are sometimes turned away from a police station on the mere ground that the reported crime has occurred in the jurisdiction of some other police station and it is for the victim to go there and make his complaint. This works to the disadvantage of ignorant people and weaker sections in society. The NPC has recommended an important amendment to Section 154 Cr.P.C. which would make it incumbent on a police station to register an FIR whether or not the crime has taken place in its jurisdiction and then transfer the FIR to the concerned police station, if necessary.

Examination of Witnesses :

The examination of witnesses should be conducted as far as practicable near the scene of offence or at the residence of witnesses concerned at some convenient place nearby.

Statement of Witnesses: According to existing law, a police officer is precluded from obtaining the signature of the person whose statement has been recorded by him. The Commission has recommended that the existing practice of recording in detail the statement by a witness during investigation should be

done away with. In its place, the Commission has suggested an arrangement in which the investigating officer can record the facts as ascertained by him on examination of a witness. This statement of facts can be in third person in the language of the investigating officer himself and a copy of the statement should be handed over to the witness under acknowledgment. This arrangement would also act as a safeguard against the malpractice of padding of statements which the investigating officers are often accused of doing.

Restoration of Stolen Property to Victims of Crimes:

Presently, properties recovered by the police during investigation or otherwise are first transferred to court custody. Their return to the rightful owner is ordered at a much later stage of the criminal proceedings. During the intervening period, there is considerable risk of damage to the property because of indifferent handling at different stages of police and court custody. Sophisticated electronic goods run a serious risk of irreparable damage. Successful detection of case does not provide any psychological satisfaction to the victims of crime when the lost property is kept away from them for a long period without proper attention and care. NPC has recommended a change in the existing provisions in law to facilitate early return of the recovered property to the victims concerned even at the stage of investigation, protected by appropriate bonds for their safe retention and later production in court.

Compounding Offences:

The NPC has recommended that the police may be empowered in law to compound offences in simple cases even at the stage of police investigation, when both parties to a dispute may themselves like to settle the matter amicably. Due safeguards must of course be provided against a forced or contrived compromise. Presently this facility is available only at the stage of trial. This amendment in law would also reduce the workload

in courts.

Intimation about Arrest: The NPC has recommended a new section 50-A in Chapter V of Cr.P.C. requiring the police to give intimation about the arrest of a person to anyone who may reasonably be named by him to avoid agonising suspense to the members of his family about his whereabouts.

Use of Third Degree Methods:

To reduce the use of third degree methods, the NPC has recommended:

- * Surprised visits by senior officers to police stations to detect persons held in illegal custody and subjected to ill treatment
- * The magistrate should be required by rules to question the arrested person if he has any complaint of ill treatment by the police and in case of complaint should get him medically examined.
- * There should be a mandatory judicial inquiry in cases of death or grievous hurt caused while in police custody
- * Police performance should not be evaluated on the basis of crime statistics or number of cases solved.
- * Training institutions should develop scientific interrogation techniques and impart effective instructions to trainees in this regard.

Inspections of courts:

There is need to evolve a scheme of inspections at the level of High Court as well as Sessions Courts to ensure proper functioning of the subordinate courts. A whole time functionary of the rank of a senior District Sessions Judge who is qualified for appointment as High Court Judge may be attached to each High Court to inspect the district courts periodically. A similar functionary of the rank of Additional Sessions Judge may be entrusted with inspections at the district level. The inspecting

arrangement proposed above should also ensure the availability of adequate facilities for the witnesses and others who participate in court proceedings.

Attendance of Witnesses:

The allowances payable to witnesses for their attendance in court should be fixed on a realistic basis and their payment should be effected through a simple procedure, which should avoid delay and inconvenience.

Fifth Report:

Recruitment to the Police:

Recruitment to the Police must be at two levels only Constables and Indian Police Service. The recruitment at other levels should be eliminated in a phased manner.

Psychological Tests:

Properly developed psychological tests should form an important part of the selection procedure. The Central Government should develop the psychological tests with the help of the Ministry of Defense.

Evaluation during Training:

The Commission recommended that there should be constant evaluation of the performance, attitudes and behaviour of all recruits during training and those who are not shaping as good policemen should be weeded out.

Control of the District Magistrate:

Presently, under section 4 of the Police Act of 1861, the District Police is subject to the "general control and direction" of the District Magistrate. The NPC felt that this cannot be construed as warranting any interference in the internal management of the police force. The police should perform with full accountability to the law of the land. Any rule or regulation which unnecessarily or without purpose subordinates the police to the DM should be removed. However, there are a number of areas, which would require active cooperation of

different departments and in such matters coordination by the District Magistrate will be necessary. The role of the District Magistrate as a chief coordinating authority should be recognised and respected by the police. The NPC has prescribed the areas where the District Magistrate can play his role as the coordinating authority.

Causes of Poor Police Public Relations: Police public relations are in a very unsatisfactory state. Police partiality, corruption, brutality and failure to register cognizable offences are the most important reasons. Police do in fact harass even those people who try to help them.

Vertical Communication in Police:

Every policeman must develop an attitude of utmost courtesy and consideration towards members of the public who come to him for help. However, the manner in which police personnel at lower levels behave towards public is largely conditioned by the manner in which they are themselves treated by their own higher officers within the force. There is a simultaneous need for reform in behaviour and conduct of police officers towards one another.

Victims of Crime: The criminal justice system shows no concern for the victim of crime at any stage. The legislation of a Criminal Injuries Compensation Act is recommended.

Need for Transparency: All police activities, to the extent possible, should be open, except in four specific areas, which are (i) operations, (ii) intelligence on the basis of which operations are planned and conducted (iii) privacy of the individual citizen and (iv) judicial requirements.

Women Police:

The NPC has recommended that women police should be strengthened and assigned investigation work in much greater measure than at present. Women police should become an integral part of the police organisation and used to deal with

crimes against women and children and in tackling the problem of juvenile delinquency. They should in due course share all the duties now performed by their male counterparts. They should be recruited in much larger numbers than at present, particularly in the ranks of Assistant Sub-inspectors and Sub-inspectors of Police.

Sixth Report:

Examinations for Promotion of Officers:

Before promotion to the ranks of Superintendent of Police, DIG and IG, all IPS officers should be required to undergo specifically designed pre-promotion courses followed by an examination and an objective selection process.

Those who are not able to qualify for the post of DIG and IG even after being given two more chances should be retired from service.

Creation of Central IPS Cadres:

Two Central IPS Cadres should be constituted - one for the paramilitary organisations and the other for such organisations as IB, CBI, RAW etc.

Police Commissionerate System for Major Cities:

In large urban areas, crime and law and order situations develop rapidly, requiring a speedy and effective operational response from the police. This can be possible only when the police are organised to perform twin basic functions of decision making and implementation. The Commission has therefore recommended that in cities with a population of 5 lakhs and above and even in places where there may be special reasons like speedy urbanisation, industrialisation etc., the system of police commissionerate would provide more effective policing and should be introduced.

Communal Riots:

The National Police Commission felt that during communal riots, adequate interest is not taken in investigation of heinous

and serious crimes. For investigation of such cases, special investigating squads under the State CID should be set up comprising officers of proven integrity and impartiality. Vigorous investigation should be followed by prosecution to ensure deterrent punishment to the offenders. Hence withdrawal from trial of cases occurring during communal riots by the State Governments with a view to promoting communal harmony often proves illusory and has to be discouraged.

Reservation in the Force: The Commission has expressed its view against reservation of vacancies in the police for minorities and other weaker sections on the basis of their share in population. The Commission felt that it would fragment the force along caste and communal lines and it goes against the fundamental police philosophy that it must rise above caste and creed and act impartially as the agent of law and order. The composition of the force should reflect the general mix of communities as it exists in the society and thereby command the confidence of different sections of the society.

Separation of investigating staff from law and order staff:

The NPC has made conflicting recommendations on this subject. While in the Sixth Report, it has suggested the separation of staff at the police station level (Para 48.15), in the Seventh Report, the Commission has expressed an opinion against the bifurcation of staff on the ground that the police work cannot be put in water-tight compartments. (Para 50.22)

Seventh Report:

Norms for Police Stations:

A police station in a rural area should not have jurisdiction of more than 150 kms. In urban areas, population density should be one of the main considerations. A police station should not be required to police more than 60,000 population. If it registers more than 700 crimes annually, another police station may be created.

Police stations in cities with more than 900 cognizable IPC offices should have a Dy. SP/ ASP as SHO. Police Stations investigating over 300 IPCs per year should be headed by an Inspector of Police. The third category will consist of smaller police stations headed by Sub Inspectors.

An investigating officer should not be required to investigate more than 50 - 60 IPC cases in India.

Restructuring of Civil Police Hierarchy:

There should be an increase in the strength at middle levels of ASI/SI/Inspector. Increase in the strength of these ranks should be offset by reducing numbers at the lower levels of constabulary. This will provide large number of investigating officers and improve promotional opportunities for the lower ranks.

Management of the Police Force:

The internal management of the police force in the state should be entirely under the purview of the chief of police. The powers of the heads of the state police forces in respect of personnel and financial management and to provide infra-structural facilities for the growth of the police should be enhanced.

Central Law for Armed Police Forces:

There should be a central enactment to ensure uniformity in composition, officering pattern, training, discipline and efficiency of the state armed police battalions.

Establishment of a Central Police Committee:

A Central Police Committee to look after the functions of consultancy and monitoring be created because an expert agency is required by the Central Government and the State Security Commissions to advise them on matters relating to:

- (i) police Organisation and police reforms of a general nature;
- (ii) central grants and loans to the State Police Forces for their modernisation and development; and
- (iii) budgetary allotments to State Police Forces.

The Committee could also make a general evaluation of policing in the country and provide expertise to the State Security Commissions for their own evaluation of they so require.

Establishment of an All India Police Institute:

An all India Police Institute on the lines of similar professional institutions existing for Engineers, Chartered Accountants and other professionals be created. This Institute, when established, should be kept under the proposed Central Police Committee.

Eighth Report:

Police Accountability:

There should be continuous monitoring of the performance of the police forces in the country. The State Security Commission should have an independent cell to evaluate police performance. The annual administration report of the head of the police force and assessment report of the Central Police Committee will provide additional material to the State Security Commission to prepare a final report on the performance of the state police to be placed before the State Legislature.

The police functionaries individually as well as in groups should be sensitised to the idea of accountability to the people.

Withdrawal of Protection:

Sections 132 and 197 of the Cr. P.C. 1973 provide protection to various categories of public servants against any prosecution brought against them relating to performance of official duties. The protection available to the police officers under these sections should be withdrawn so that the private complainant is free to press his complaint against police official for a judicial pronouncement without there being a provision to obtain prior permission of the competent authority for such prosecution.

Enactment of a Model Police Act:

The Police Act of 1861 should be replaced by a new Police Act, which not only changes the system of superintendence and

control over the police but also enlarges the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.

Response to NPC's Recommendations:

The major recommendations of the NPC have remained unimplemented. There is a deep seated and strong resistance to the idea of police reforms. Politicians and bureaucrats have developed a great vested interest in retaining control and superintendence over the police organisation. Indicative of the deeply entrenched resistance to police reform is the fact that a letter written on the subject in April 1997 by Shri Indrajit Gupta, the then Union Home Minister to the Chief Ministers of all States exhorting them to rise above narrow partisan or political considerations and introduce police reforms on the lines recommended by the NPC failed to produce even a single response.

Within the police establishment also, there are those who are content to retain the status quo. Closely associated with powerful interests, they acquiesce in and allow the system to continue.

The existing system is unacceptable. It has resulted in subverting the rule of law and in obstructing the growth of a healthy and professional system of policing. It must change.”

115. The Bureau of Police Research & Development, Govt. of India has sponsored “National Requirement of Manpower for 8-Hour Shifts in Police Stations of India” (hereinafter referred to as the BPR&D), under the leadership of Mr. Kamal Kumar, IPS (Retd.) with following objectives:-

- I. Identification of legal provisions for 8 hours working shift,
- II. An assessment of the present status as to the actual number of hours of duty being performed by police personnel in different regions/areas (both urban and rural) in the country,
- III. Examination of the existing compensation system for

working beyond 8 hours and desirability of the same,

IV. Identification of duties and factors which warrant police personnel necessarily working beyond 8 hours,

V. Identification of force multipliers and extent of their application to substitute manpower,

VI. Identification of functions that can be outsourced and cost effectiveness thereof,

VII Examination of the norms for police station manpower in different regions/areas (urban/rural) to perform all the duties cast upon the police,

VIII. Estimation of extra manpower needed for introduction of 8 hours shifts in the police station functioning,

IX. To make necessary recommendations.

116. The International Scenario of the Working Hours of Police Station Personnel has been discussed in Chapter 4. It reads as under:-

Policing systems, the world over, were developed on the basic premise that the police work requires round-the-clock functioning. In most countries, earlier on this used to be complied with an irregular work hour regime. However, in recent times, the emerging concerns of employee welfare, alongside need for efficiency in operations have necessitated a relook at the working hour arrangement for police personnel. Progressive police organizations in different parts of the world now follow shift system of functioning.

Police forces in the developed world, thus, have their police station personnel working in shifts. The systems prevailing include: shifts of 8-hour, 9-hour, 10-hour, 12-hour, or their variants, with limits to maximum work-time on a weekly or monthly basis. Countries also undertake reviews of their shift systems, from time to time to bring about an equilibrium as to the needs for good policing, work-life balance for employees, and also to economizing the overtime payments.

A few examples of shift systems in vogue in some police jurisdictions are briefly described below.

In the United Kingdom most police departments follow the European Working Time Directive. The specific shift schedules operated by them vary from jurisdiction to jurisdiction, in overall conformity with these directives. For example, the Kent Police Department has both 8-hour and 10-hour shifts embedded in their system, with the shift duration alternating every week in a 4-week cycle. Kent Police regulations stipulate a limit on average weekly working time of 48 hours, along with a maximum daily rest period of 11 consecutive hours in every 24 hours. Minimum weekly rest of 24 consecutive hours in each seven-day period or 48 consecutive hours over a 14-day period are also provided for in the regulations.

In the case of Essex Police, provisions are made in the regulations that staff shall not be required to work in excess of an average of 48 hours in a week in usual circumstances. These working hours include normal duty hours, as well as any overtime work, including work performed on a rest day or public holiday, or during off-duty hours. Personnel are also entitled to a rest period of not less than 11 hours in between two days of duty, and shall not be required to work for more than seven days between each rest period of a minimum of 24 hours. The Staffordshire Police follow a shift pattern of 2 morning-shifts, 2 day-shifts and 2 night-shifts, followed by 4 rest days.¹⁰ Some police departments follow the so-called 'Regulation Shift Pattern', under which personnel work through a rotation of eight hour shifts (0600-1400 hrs., 1400-2200 hrs., 2200-0600 hrs.). In Scotland, Regulation 22 of the Scottish Police Federation prescribes guidelines for the normal periods of duty of police personnel, the periods allowed for rest and refreshment, variable shift arrangements, etc.

The National Police Improvement Agency of the U.K. has evolved, as part of its National Modernisation Programme, an exhaustive 'Shift Pattern Review Toolkit', for providing guidance to those involved in review, evaluation, design and implementation of shift systems for police personnel.

In Canada, the Ottawa Shift System is commonly used by police stations. Originally developed in 1981, the system works on a three-shift basis – a 10-hour day shift, a 10-hour evening shift and an 8½ -hour night shift, on a 35-day cycle. The working hours of shift are calculated on the basis of annualized hours, and not on monthly or weekly hour basis. The system enables police personnel to enjoy increased rest days resulting from longer shifts.

Various police departments in the United States of America follow a 40-hour work week. The shift patterns and durations differ from one department to another. The work schedule of New York Police consists of shifts of 8 hours and 35 minutes, arranged in a 15-day cycle of 5 work days – 2 off days, followed by 5 work days – 3 off days. The cycle is rotated every 15 days. During their shifts, personnel are given one hour meal time and two twenty-minute breaks. The personnel of Georgia City Police currently work in 12-hour shifts, which are switched every 8 weeks. The County Police in Georgia work in 10-hour shifts. In Seattle Police Department, patrol officers work on a rotating schedule of 9-hour 'watches', in a 6- day cycle. They work for four days in a row, in the 6-day cycle followed by two off days. The Lincoln Police Department, Nebraska, has the traditional 8-hour shift schedule, coupled with some instances of 10-hour shifts. They also introduced 12-hour shifts on a trial basis, some time back. The Middletown Police in Rhode Islands observes a 12-hour shift schedule in a 14-day cycle: 2 days off – 3 days work, 2 days off – 2 days work, 3 days off – 2 days work.

In Australia, Victoria Police had been following a 12-hour shift system till 2009, when they switched back to 8-hour shift schedule.

In South Africa, prior to 1994, the SAPS followed an 8-hour shift pattern, consisting of three shifts (0600-1400 hours, 1400-2200 hours, 2200-0600 hours) in various cycles. In 1994, this was replaced by a 12-hour shift system. In May 2002, the Commissioner, SAPS and the employees' unions concluded a collective agreement, which stipulated "the ordinary working hours of an employee shall not be more than 40 hours per week. The daily hours of work shall not be more than 8 hours per day for those performing administrative duties. Others will perform duty in either 8-hour or 12-hour shifts. Employees performing 8-hour shifts would do so five times a week. Those rendering services on 12-hour shifts would work on average of three or four times per eight-day cycle". This arrangement continues to be in vogue.

In Japan, the Police Kobans in Tokyo Metropolitan Police Department work in four daily shifts, while in other prefectures they work in three shifts.

In Hong Kong, police officers work in three shifts a day. The above picture about the prevalence of shift systems is just illustrative.

Indian scenario

Long duty hours

Police station personnel in India have unduly long and irregular duty hours. A study conducted by the National Productivity Council in 1977, at the behest of the National Police Commission, had established that the normal working hours of a subordinate police officer on public order and crime investigation duty ranged between 10 and 16 hours per day, seven days a week. A computerized survey undertaken by Tamil Nadu Police also showed that constables worked on an

average 14 hours a day without respite. The extensive survey conducted as part of the current study has brought out that the deplorable state of inordinately long working hours for police station personnel, coupled with denials of weekly offs to them, and the often recalls to duty during their off days/off time continues to widely prevail in the country. The situation is indeed serious and needs urgent attention.

Duties and factors warranting more than 8 hours of work

Focus Group Discussions (FGDs), held with cross sections of police station functionaries at cutting edge level (Constables to SHOs) in the course of this study, pointed to several factors that warrant police station personnel to work beyond the usual norm of 8 hours' duty in a day. Such factors are indeed numerous and important among them are briefly discussed below.

Ever-increasing law & order related duties

Growth of democratic processes in the Indian society has led to the increasing agitational activities which manifest as rallies, processions, dharnas, 'rasta roko', 'rail roko', etc., at the drop of a hat. At the same time, an increasing frequency and exuberance in organizing fairs and festivals is also noticeable. Over and above all this, police have to provide bandobust for activities as innocuous as conducting examinations in colleges and other educational institutions. In fact, there are quite a few new and varied responsibilities the police in India have to shoulder now, which by no reckoning fall in the realm of normal policing. Failure of functioning of other wings of the administration also adds to the responsibilities of the police in the name of law and order maintenance. Some illustrative examples from Andhra Pradesh, for instance, include ensuring the availability of adequate and genuine seeds and fertilizers during the sowing season; enquiry regarding 'fake students' residing in college hostels; organizing garbage removal when it

causes tension in localities, and so on. There were also days when Government liquor was sold from police stations in Telangana region of Andhra Pradesh, as naxalites had given a call for its boycott. Thus, ever-growing magnitude of law and order work, without commensurate augmentation of staff strength in police stations, inevitably leads to far longer than 8 hours of arduous work for the available manpower, practically round the year.

Ever increasing VIP bandobust and VIP security work

Providing bandobust during VIP visits to their jurisdiction and in the programmes attended by VIPs, is a frequent chore to be performed by most police stations, over and above all other normal duties. This is in addition to the work of providing security to VIPs, whose number is ever burgeoning.

Increasing magnitude and complexity of crime work

The ever-rising criminal activities with growing variety and complexity need a lot of time and resources of the police to deal with them effectively. The problem is compounded by inadequate availability of scientific aids for investigation, as also non-availability of legal guidance and assistance to the police. This makes the crime investigation much more time consuming.

Shortage of manpower in police stations

While shortage of manpower has been a perennial problem with the police in India in general, it is particularly so in police stations, which are the basic units of policing. Increase in manpower strength in police stations in the post Independence period has been disproportionately low, compared to the growth in the population, crime rate, law and order workload and other police responsibilities and the available meager manpower has had to shoulder the additional burden. Increasing complexity of crime and host of law and order problems have added the stress and strain of police personnel.

All these have resulted in longer hours of arduous, strenuous and stressful work for personnel, far in excess of the normative 8-hour work day. It is an irony that even public holidays only bring more work for them. They have also to forego their weekly off quite often.

Disorganised functioning of police stations

The existing somewhat disorganized work processes in police stations, which are both cause and effect of the work overload, also lead to avoidable wastage of manpower. SHOs are usually so overburdened with work and responsibilities that they hardly have any time left for advance planning. Even the task of distribution of duties among the police station staff is generally delegated to the Station Writer/Moharriar/ Munshi/Chitta Munshi. This often leads to absence of multitasking and deployment of right person for the right job, besides causing other problems. Long and irregular hours for staff, in fact, adds to the chaotic ways of police station functioning. Case study of the successful initiative of Kerala Police in introducing 8-hour duty system, undertaken as part of the current project, found a large majority of SHOs reporting that their own working had become more organized after the introduction of the new duty regime.

Diversion of manpower on ‘attachments’ and other duties not related to police station functions

The unhealthy practice of diverting manpower from police stations to higher formations, to make up for shortage of staff in those units, also adds to the workload of the remaining staff of those police stations. Such “attachments” are often necessitated on account of non-sanction of the required manpower in superior offices. For instance, our case study of Delhi Police brought out that, from a number of police stations, staff had to be deputed on “attachment” to the offices of DCPs and ACPs to man ‘RTI Cells’, ‘Legal Cells’, ‘Parliament Questions Cells’, etc., which have fairly heavy workload yet

with no sanctioned staff. Similarly, very often personnel from police stations had to be diverted on prisoner escort duty, due to shortage of manpower in the Armed Reserves.

Inadequate infusion of technology and non-availability of technological tools/aids

Technology, among many benefits it offers, is a proven resource for economizing on manpower. Unfortunately, the progress of harnessing its full potential in the police functioning in our country has been slow and tardy. Use of computers is limited and even the work of record maintenance is still done manually in most of the police stations. This results in a lot of repetitive work. For instance, case study of Delhi Police brought out that in the absence of computerization of records, such as Malkhana registers, a lot of P.S. staff time was being wasted in bringing forward a very large number of entries in those records, year after year. Similarly, provision of personal computers/Laptops to investigating officers could help in speeding up investigation of cases by way of providing them instant access to databases, as also generating different reports. Kerala Police, in their successful endeavour of putting in place the 8-hour duty regime for police station personnel, have gainfully harnessed several technological means, leading to economizing on manpower.

Court work processes

Both the processes of courts and those relating to court work in police stations are archaic and lead to wastage of PS staff time. SHOs and investigating officers, thus, end up attending the courts unproductively, when the cases are merely adjourned due to one reason or another. Avoiding this kind of wastage is not in the hands of the police. However, in handling court-related work by police stations, wastage of manpower can certainly be avoided by improvising on the processes. For instance, Vijayawada Police, in an innovative effort, integrated the court work of all its police stations into a centralized Court

Liaison Cell for the entire Commissionerate. This new Court work Monitoring System is supported by a computerized web-based application. The system is saving manpower deployed on court work significantly while also contributing to noticeable improvement in the quality of court work. A more detailed account of this system is given in Chapter 9.

Other factors

Among other factors that cause avoidable wastage of time for police station personnel are:

- (i) Repetitive demands of information and data from departmental superiors, courts, the National / State Human Rights Commission and other statutory bodies.
- (ii) Pressure – at times genuine, at others not so genuine – to perform a particular task with great urgency.
- (iii) Inadequate sensitivity of seniors to subordinates need for rest, recuperation and recreation.

Systems of compensation for extra work

Information was solicited from various state police organizations, in the course of the current study, on the details of compensation (monetary or otherwise) available to police personnel for extra hours of working. From the replies received, it would appear that the police station staff in a majority of States and Union Territories are paid one month's additional pay in lieu of working overtime, as also on holidays and during their weekly off days. Among the states where this system of compensation is in vogue are Arunachal Pradesh, Haryana, Himachal Pradesh, Manipur, Meghalaya, Punjab, Uttarakhand, Uttar Pradesh, West Bengal and Delhi, besides the Union Territories of Andaman & Nicobar Islands, Lakshadweep, Puducherry.

In Himachal Pradesh, over and above one month's extra pay, police personnel of the ranks of Constables to Inspectors are allowed to avail 15 days of 'special leave' along with travel

concession in Himachal Road Transport Corporation buses. Rs.140 is deducted from the salary of the personnel for the purpose every month.

In Gujarat, the staff are allowed compensatory leave for each holiday foregone by them. Maharashtra Police give 'refreshment allowance' of Rs.700/- per month per head to constables, naiks and head constables, and Rs.840/- to staff in the ranks of Sub-Inspectors and ASIs for performing duty for more than 10 hours a day. In Tamil Nadu, the staff members who are not able to avail their weekly off are paid an allowance of Rs.200/- for each such foregone off day.

States like Assam, Gujarat, Karnataka, Mizoram and Tripura, however, reported that there is no system of compensation – monetary or non-monetary - available to police station personnel in their states.

The overall picture of the compensation systems in practice is anything but satisfactory. Even one month's additional salary is hardly an adequate compensation for slogging day in and day out all the year round.

Shift systems currently in vogue

Information on the details of shift system of work, if any, in vogue (formally or informally) was also sought from the police organizations of various States and Union Territories.

From the details so available, the following picture emerges:

No shift system as such is followed in the States of Assam, Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Manipur, Uttar Pradesh, Uttarakhand, West Bengal and the Union Territory of Andaman & Nicobar Islands.

In Andhra Pradesh, Karnataka and Tamil Nadu, the State Police Manuals prescribe different shift systems for urban, semi-urban and rural police stations. However, during the

periods of work pressures, the system is either given up or modified suitably.

In Meghalaya, 8-hour shifts are informally in vogue in some districts like East Khasi Hills, Jaintia Hills and South Garo Hills.

In Punjab, a 2-shift system (0800-2000 hrs. and 2000-0800 hrs.) is informally followed in the Police Commissionerates of Jalandhar, Amritsar and Ludhiana cities, and some of the districts. In the remaining jurisdictions, no shift system is followed.

In Delhi, shift system is followed only for some duties, though in different shift patterns. Thus, Duty Officers, and General Diary Writers perform duty in 3 shifts; Reception Desk, Women Help Desk, Picketing duty, emergency duties, etc., are manned on 2-shift basis; CIPA staff and drivers also perform duty in 2 shifts; station sentry duty is performed in 4 shifts.

In LakshawEEP, normal duty time for constabulary is generally 8 hours. Shift system has been introduced for duties which require round-the-clock functioning.

In Puducherry, shift system is in vogue only for the staff on beat duties and sentry duties.

It is, thus, clear that barring a few exceptions, shift system in police station functioning is not formally in vogue in most jurisdictions. But in many States/UTs or parts thereof, informal shift systems of different patterns have been introduced, and the same are being followed on an ad hoc and off and on basis. This picture is also clearly borne out by the responses to the survey conducted as part of the current study.

Legal provisions relating to duty hours for working classes

Legal provisions to regulate the length of duty hours for working classes exist in a large number of countries. There are also international conventions and other instruments, laying

down norms and rules for work hours and other working conditions, which are required to be followed by countries which ratify such conventions/instruments.

Universal Declaration of Human Rights, adopted in 1948 by the United Nations, deals with the subject in its Articles 23 and 24. Article 23 provides for right of everyone to 'just and favourable conditions of work'. Article 24 stipulates everyone's 'right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay'. All Member States of the United Nations Organisation, including India, have an obligation to protect these rights in respect of all their citizens, naturally including those working in police organizations.

The International Labour Organisation (ILO) of which India is a founding Member, has, over the years, elaborated several conventions and declarations aimed at regulating the working conditions of labour and other working classes, including their work hour limits. The ILO's database of Working Time Laws is a comprehensive source of information on national working time laws of more than 100 countries.²⁵ This database covers all the main elements of working regulations, including hour limits, overtime work, rest periods, public holidays, annual leave, and so on.

The ILO instruments, relevant in our context, include:

1. The Hours of Work (Commerce and Offices) Convention, 1930, extending the 48-hour working week to workers in commerce and offices.
2. The Forty-Hour Week Convention, 1935, establishing a new standard of the 40-hour working week.
3. The Weekly Rest (Commerce and Offices) Convention, 1957, prescribing at least 24 consecutive hours of rest each week.
4. The Holidays with Pay Convention, 1970, stipulating an

annual paid holiday of a specified minimum length.

5. The Workers with Family Responsibilities Convention, 1981, prescribing that each Member-State shall make it an aim of national policy to enable persons to engage in employment without being subject to any conflict between their employment and family responsibilities.

In pursuance of the ILO conventions, statutory normal hours of work of various classes of workers have been reduced gradually from 48 hours to 40 hours in a large number of countries. And, a 40-hour week is now the most prevalent standard.

The international standards and legislations in a vast majority of countries now also specify a limit on the number of working hours beyond which overtime payments are to be made. There are additional limits on overtime hours.

Weekly hour limits make a substantial contribution towards preserving workers' health and permitting them to strike an acceptable balance between paid work and domestic as well as other responsibilities. The dominant rationale of such limits has been to ensure adequate non-work, or 'leisure' time, for workers. The 40-hour limit contributes to a broad range of such objectives, including towards advancing work-life balance.

Weekly rest also is among the most universally accepted elements of working time laws, and almost all countries mandate at least one rest day for all working classes.

According to Sangheon et al, working time policies have long been recognized as having a role in improving productivity. Decent working time arrangements, therefore, need to fulfill five interconnected criteria. They should (a) preserve health and safety of workers, (b) be family friendly, (c) promote gender equality, (d) enhance productivity, and (e) facilitate worker choice and influence overworking hours.

Legal provisions for working hours specific to Police United Kingdom

After the advent of the Working Time Directive of the European Union, the police forces in the U.K. have appropriately modified their respective police regulations to bring the working hours of their personnel in tune thereto.

United States of America

The subject of working hours of the police is covered under section 3 (s) (1)(c) of the Fair Labour Standards Act (FLSA), which is a federal statute covering all employees of the federal and state governments across the USA. The provisions in this section are majorly concerned about the payment of compensation to law enforcement officials for working overtime rather than stipulating a limit on working hours. The FLSA requires payment of overtime pay to employees at no less than one-and half times their regular rates of pay for all hours worked in excess of 40 hours in a work-week. As regards daily or weekly rest periods, the Act specifies that an employee be given compensatory time, at a rate of not less than one-and half hours for each overtime hour worked, in lieu of cash overtime compensation. Police personnel may accrue up to 480 hours of such compensatory time.

South Africa

In South Africa, Regulation 31 of the South African Police Service Employment Regulations authorizes the Police Commissioner to determine the working hours of police personnel. In May 2002, the Commissioner, after consultations with various unions, issued orders stipulating that (a) the ordinary hours of work of any employee shall not be more than 40 hours per week; (b) the daily hours of work shall not be more than 8 hours per day for those employees who render administrative duties; and shift duties for the rest will be performed in either 8 hour or 12 hour shifts.

India

In India, no specific law seems to contain provisions relating to working hours for police personnel. However, the Constitution of India itself recognizes the concept in its Article 42, under “Directive Principles of State Policy”. This Article specifically enjoins upon the state to make provision for securing ‘just and humane conditions of work’. The Constitution also emphasizes that these principles are ‘fundamental in the governance of the country’ and that ‘it shall be the duty of the state to apply these principles in making laws’.

The right to just and favourable conditions of work is also covered in the case law through judgments of the Supreme Court of India in several cases. In **Daily Rated Casual Labour v. Union of India**, the Supreme Court in its judgment held that the right to just and favourable conditions of work was among the rights which had to be ensured by appropriate legislation and executive measures.

In **Vishaka v. State of Rajasthan**, the Apex Court emphatically stated that the right to work with dignity is a universally recognized basic human right and that the common minimum requirement of this right has received global acceptance.

In **Dharwad District PWD Daily Wages Employees v. State of Karnataka**, the Supreme Court again observed that the right to just and favourable condition of work, among some other similar rights, has to be ensured by appropriate legislation and executive measures.

In **C.E.S.C. Ltd. V. Subhash Chandra Bose & Ors.**, the Apex Court held that just and favourable conditions of work implies to ensure safe and healthy conditions for workmen.”

117. The study has summed up the manpower norms for police stations in India as under:-

“To sum up:

The foregoing review of the existing scenario of ground situation as also of the available reports of various studies conducted from time to time by expert commissions/committees and individuals clearly indicates that the subject of fixing manpower norms for police stations in a scientific manner has, by and large, proved elusive to police organizations and the governments so far. Barring a smattering of honourable exceptions, there is little evidence of any systematic exercise having been taken up to arrive at appropriate yardsticks, even in the period following the recommendation (1981) of the National Police Commission for operations research to evolve the norms and yardsticks. The only scientific exercises are represented by the Saraf study in the context of Maharashtra Police, the A.F. Ferguson study of Kerala Police, and, to some extent, the McKinsey study of requirements of police stations in Maharashtra. The studies of Saraf and McKinsey, however, do not take into account shift functioning in police stations, in working out manpower norms.

It is high time the matter is systematically taken up by all the States, duly taking into consideration the requirement of shifts functioning of police stations as also the different ways and means of economizing the manpower requirement by way of exploring means such as business process re-engineering, multitasking, the scope of outsourcing some of the non-core and non-statutory functions of police stations and infusion of technology, wherever feasible.

118. In Chapter 7 of the report, the analysis and discussion of survey results has been made including adverse impact of existing pattern of duty hours as under:-

“For ascertaining the present status of actual extent of duty hours of police station personnel, status of availment of

weekly offs by them, and the frequency of their being recalled to duty during their off time/days, as also for obtaining the views and opinions of stakeholders on other aspects of the research study, field survey was conducted by administering three different questionnaires, one each for (i) police station staff other than SHOs (PCs, HCs, ASI/SIs), Station House Officers (SHOs), and (iii) their supervisory officers (DySP/ACP/District SP/DCP, etc.), structured after detailed consultation with some senior serving and retired police officers, as also academic experts in the ASCI. Copies of the questionnaires are placed at Annexure – 3.

Adverse impact of existing pattern of duty hours

It shows that 79.2% respondents among police station personnel asserted that the present regime of long and irregular working hours was not found convenient by them for attending to their personal / family needs and social commitments. More than 82% of SHOs also either found the current duty hours not convenient in facilitating personal and social needs of their staff, or preferred not to answer this question.

119. The report has also discussed in the same chapter the Current Duty Hours Leading to Health Problems as under:-

“Current duty hours leading to health problems

It shows that 74% of police station staff felt that the present working hour arrangement was leading to various kinds of health problem for them. Significantly, 76.25% of SHOs also answered this question in the affirmative.”

120. Chapter 8 deals with national requirement of manpower for shift functioning in police stations as under:-

“It is imperative that manpower availability in any organization has to be commensurate with its workload. The available manpower in police stations in India is inadequate.

This is borne out by the inordinately long working hours for the staff. Most of the additional manpower requirement for introducing the shift system, in fact, manifests in the long duty hours being currently put in by the police station staff. The survey conducted for the study brings out the extent of this malaise. The study adopted two-fold approach for estimation of the manpower requirement for operating shift system in police stations.

The first approach was to calculate the additional requirement of man-hours and man-days from the extra hours of daily duty being put in by staff, along with the weekly offs foregone by them.

In the survey, SHOs, who are the key functionaries of the police stations, were asked to indicate their considered assessment of extra manpower requirement (rank-wise) for shift functioning in their respective police stations. The second approach was to use this information in estimation.

In addition to these two methods, assessment of manpower requirement could also be broadly made from the action research conducted in a few police stations in Madhya Pradesh.

Requirement based on current work overload shouldered by police station staff

Estimation of extra man-days required, based on average duty hours being put in by the existing staff, is presented in the Tables 1-4 below:

Table 1

Extra man-days required to make up for longer than 8-hours duty in a day put in by staff

As per SHOs' responses

<i>Length of duty hours</i>	<i>Average hours of duty</i>	<i>Extra hours put in</i>	<i>Percentage of responses</i>	<i>Extra man-hours put in</i>	<i>Equivalent no. of man-days @ 8 hours per man-day</i>
Up to 8 hours	-	-	9.35%	-	-

<i>Length of duty hours</i>	<i>Average hours of duty</i>	<i>Extra hours put in</i>	<i>Percentage of responses</i>	<i>Extra man-hours put in</i>	<i>Equivalent no. of man-days @ 8 hours per man-day</i>
8-10 hours	9 hrs.	1 hour	22.70%	1 X 22.7 = 22.7	2.8
11-14 hours	12.5 hrs.	4.5 hrs.	37.65%	4.5 X 37.65 = 169.4	21.2
> 14 hours	15 hrs.	7 hrs.	30.40%	7 X 30.4 = 212.8	26.6
Total				404.9	50.6

Additional requirement of manpower = 50.6% of the existing strength

Table 2
As per Supervisory officers’ responses

<i>Length of duty hours</i>	<i>Average hours of duty</i>	<i>Extra hours put in</i>	<i>Percentage of responses</i>	<i>Extra man-hours put in</i>	<i>Equivalent no. of man-days @ 8 hours per man-day</i>
Up to 8 hours	-	-	11.85%	-	-
8-10 hours	9 hrs.	1 hour	12.20%	1 X 12.2 = 12.2	1.5
11-14 hours	12.5 hrs.	4.5 hrs.	52.30%	4.5 X 52.3 = 235.35	29.4
> 14 hours	15 hrs.	7 hrs.	23.70%	7 X 23.7 = 165.9	20.7
Total				413.45	51.6

Additional requirement of manpower as per responses of SHOs = 50.6% of the existing strength

Additional requirement of manpower as per supervisory officers' responses = 51.6% of the existing strength

Average of 50.6% +51.6%= 51.1%

Going by the SHOs’ responses on extra man-hours put in by the existing staff, we would need additional 50.6% of the current staff strength to operate 8-hour shift. From the responses of supervisory officers, the requirement works out to 51.6% of the current strength. This is a remarkable overlap in the two response sets about the additional manpower need. SHOs and SOs are closely associated with police station functions though at different levels. To add to this, the

responses coming from a widespread sample reflect an all India picture. Taking the average of the two, the extra manpower requirement for 8-hour duty per day can be reckoned as 51.1% of the current strength.”

121. There is emphasis on Infusion of Technology and Outsourcing of Non-Core Policing Functions as under:-

Infusion of technology

“Technology is a proven tool for economizing manpower and other resources as well as efficiency enhancement. It is of special significance to an organization like the police which is most of the time hard-pressed for resources including the human resource. Internationally, police have been among early users of technology in their functioning. Use of radio communication by the police, for instance, dates back to the early decades of 20th century. Lie detectors came in vogue almost at the same time, and so on. Since then, police practitioners in many countries have increasingly been relying on technology in efficient performance of their job, without having to deploy too much of other resources. Computer-aided dispatch system, on-line offence reporting, automated fingerprinting system etc., are but a few examples of pervasiveness of technology in police organisations. Indeed, the degree of the same varies from country to country.

In India, police functioning still suffers from a significant technology gap. Many technological devices are known to exist, which can help the police perform several of their tasks with greater efficiency, while also economizing the requirement of scarce manpower and other resources. But, for many reasons, even technologies readily available off the shelf in the market have, if anything, only slowly been adopted into police operations. Availability of sufficient funds, has no doubt

been an impediment but that certainly is only one part of the problem. Another major problem is the absence of technology savvy and trained personnel on the staff of most police units. For example, many units, including police stations, having computers seem reluctant to use them for even their routine tasks, let alone for higher end applications. Similar is the fate of CCTV camera systems in many police units equipped with the same.

Computerisation in public services was almost pioneered in India by the police organization, with the third generation TDC 316 computers having been provided to a large number of states. Since then several initiatives have been introduced to leverage Information Technology in police functioning. These include the Crime-Criminal Information System (CCIS) and Computerized Integrated Police Applications (CIPA), both initiated by the NCRB, as also several state level applications like the e-COPS of Andhra Pradesh, Police I.T. of Karnataka, Thana Tracking System of West Bengal etc. In 2008, a comprehensive integrated application, the 'Crime-Criminal Tracking Network System' (CCTNS) was sponsored by the Government of India as a Mission-Mode project under the National e-Governance Plan. The concept envisages a nation-wide networked environment for sharing real time crime and criminal information across more than 15000 police stations and nearly 6000 higher police functionaries in the country. To establish connectivity between different police units, dispersed all over the country, another scheme of communication network, named POLNET, was launched quite sometime ago. Unfortunately, the progress of implementation in all these schemes has been rather slow. Police organizations have, thus, not yet been able to fully reap the benefits of these technological initiatives.

Technology in many fields has advanced by leaps and

bounds. It can metamorphose the way policing is done and at the same time can enormously help the police economise their manpower. From micro computers to drones/UAVs in the sky, technology abounds with all its potential.

Tablets and smart phones can give instant access and ability to disseminate important information from anywhere any everywhere, thereby saving a lot of time of police officers. GPS technology can help in pinpointing the location of a distress call and determine the shortest, fastest and safest route to it, enabling the police to reach out for help more speedily. It can also be used in crime analysis to identify the trends in crime locations and help plan for preventive measures. Drones/UAVs are law enforcement's eyes-in-the sky. They can perform surveillance and other tasks that police officers manually cannot. They can provide real-time information about crimes and dangerous situations as they unfold. This can help the police better plan and deploy their resources. Drones/UAVs can also capture video images of crimes and law and order situations to provide crucial evidence in future court proceedings. Biometrics is useful in multiple ways – from data security to suspect identification. Its use by police agencies abroad is rapidly increasing. DNA databases and software helps reduce the time and backlog in solving crime.

The above are but a few examples of how very useful technology is for efficient and manpower-economical policing. Indeed, technology is invaluable as a force multiplier that improves efficiency, effectiveness, as also help save time and manpower of the police. It is, therefore, essential for police officers to stay current with various technological advances. For this, indeed, they need to have working knowledge of what such technologies can do for improving the efficiency and speed in police work.”

Outsourcing of non-core policing functions

“Outsourcing refers to transferring of certain activities identified as non-core functions of an organization to an outside entity. It is a dynamic management strategy, now commonly adopted by organizations to conserve their manpower for their own core functions, by transferring some or all of their non-core functions to external entities. This enables them to put their own limited resources to use in better accomplishment of their core functions. The concept is particularly relevant for the police organizations in India, reeling as they are under tremendous manpower crunch. Many functions and duties performed by police stations in India, as elsewhere, do not require any specialized skills, knowledge or capabilities of trained police manpower. There are also tasks that are either far removed or only remotely connected with civil policing. For many such functions and duties, outsourcing can be an effective solution to ease the strain on the limited manpower available with police stations.

Outsourcing, as a management strategy, was initially conceptualized in the private sector. It has since become more or less a norm in private sector organizations and is increasingly being adopted by public sector enterprises as well.

Outsourcing police functions

In commercial enterprises, the option of outsourcing is considered primarily for reasons like cost saving or improvement in quality of goods or services to meet market requirements, etc. Policing cannot, however, be treated as a commercial good or service, whose performance is to be assessed on the basis of cost considerations alone. The following important factors, therefore, have to be kept in view while opting for outsourcing police functions.

Policing - a sovereign responsibility

Providing safety and security to the people is a sovereign responsibility. So, while individual non-core functions of the

police can be considered for outsourcing, the overall responsibility for efficient policing cannot be outsourced.

Quality of service

When any task is outsourced, it has to be ensured that the quality of service provided does not take a hit. Apart from the quality of the service, the completion time of an outsourced task is also important.

Legal aspects

Many of the non-core policing functions are mandated by law, or rules and regulations. Offloading of such police station functions would require appropriate amendment in the law or the rules, as the case may be.

Basic principles of Outsourcing

While considering the option of outsourcing in the police organization, the following basic principles have to be kept in mind:

- (1) Outsourcing is neither appropriate nor an advisable option for all functions. Only non-core and routine functions can be outsourced.
- (2) A key issue to be resolved in the process of adopting outsourcing is therefore, the determination of core and non-core functions of the police station.
- (3) Many functions performed by the police are sovereign or inherently government functions, which cannot be outsourced.
- (4) Once the decision about outsourcing any functions has been taken, the objective and scope of outsourcing has to be clearly defined in each case.
- (5) There has to be a mechanism in place for regular evaluation of the effectiveness of outsourcing. Identification of performance indicators is also necessary to assess the success or otherwise of outsourcing.
- (6) The organization must have adequate level of in

house expertise and trained staff to supervise outsourced services.

Methods of outsourcing for police organizations

Outsourcing of police functions can be achieved by using three alternative methods: (i) Civilianisation, (ii) Privatisation, and (iii) Public-private Partnership.

Civilianisation means direct replacement of police officers from certain jobs by civilians, who are neither recruited and trained as police officers nor legally empowered as such. Increasingly, the world over, the police organizations are experimenting with a diverse mix of volunteers, retired police officers, part-time officers, or even hiring full time civilian staff on time-specific, flexible contracts.

Privatisation means entrusting some police functions to private personnel or private security agencies against some remuneration or compensation.

Public-Private Partnership is a contractual agreement between a public service organization and a private entity to share their skills and assets for delivering a service or facility for public use. The responsibility and rewards are also appropriately shared between them.

Experiences of police organizations abroad

Outsourcing as a means of economizing on sworn manpower, has been adopted by many police organizations in different parts of the world. Police functions chosen for outsourcing vary from jurisdiction to jurisdictions and include guarding of public premises and buildings, court security, prisoner custody, video surveillance, traffic and parking control, radio dispatching, maintenance of computer and communications equipment, training, etc. Some examples of the outsourcing experiences of a few countries are briefly mentioned below.

In the United States of America, in Miami Beach,

Florida, the police hire private security officers to guard public buildings and thereby save 30 percent of the cost to hire and train additional police officers to secure those buildings.

The cities of Atlanta, Georgia, California, Hollywood, Maryland, Chelsea, Massachusetts, etc., have outsourced some aspects of parking enforcement.

In San Francisco, licences to patrol beats have been given to private security providers, who engage local residents as private police officers called 'specials'. They make arrests, conduct investigations, and register traffic offences, etc. and are accountable to the regulatory authority of the police commission, as per contractual obligations. Williamston, Michigan has a volunteer reserve programme to supplement the police. These volunteers, many of whom have a plan for career in police work, work alongside a regular police officer. They undertake bike patrols, police special events and take crime prevention measures. They are vested with the authority to enforce law and make arrests. However, they do not enjoy legal protection normally available to police officers, like under sections 45 and 197 of our Cr.P.C.

In the United Kingdom, the Police Reform Act, 2002 has formalized various modern concepts of policing and the private sector has thus begun to make significant contributions to policing. The Act of 2002 has also popularized the concept of 'extended police family', which enables participation by retired or part-time police officers, special constables, local authority wardens, and private sector security patrols, in enforcing law and keeping order. Special constables are volunteers with full police powers. They participate in patrolling and other crime reduction initiatives. They work for a minimum of four hours a week, normally in the evenings or weekends. They wear uniform, are suitably trained, and are compensated with locally funded allowances.

The Police Reform Act of 2002 also authorizes the police to employ Community Support Officers (CSOs) from among community volunteers on fixed-term contracts. The primary functions of CSOs, who are vested with limited police powers, are to provide visible reassurance patrol and deal with low-level disorder and anti-social behaviour. They also gather valuable evidence following major incidents due to their intimate knowledge of the local communities. They are used as Traffic Wardens as also maintaining order at public events and providing support to police officers in other situations.

The U.K Criminal Justice Act, 1991 provides for private policing to take responsibility of the maintenance of order in court rooms. It also provides for privatization of police training.

The U.K. also has a Volunteer Cadet Scheme under which those interested in the police service in future are enlisted. These volunteers are deployed to monitor the CCTV system in police stations or used in crime analysis. They also man the front counters of police stations, besides rendering assistance to police station staff in administrative etc. functions.

Police in Netherlands use volunteer police officers for basic policing tasks. More than 2000 civilian volunteers active in Netherlands are said to have not only increased the police strength but also strengthened the bonds between the police and the communities.

In Ireland, the police use civilian detectives, who contribute more than 10 per cent of the total force. In addition, there are civilians employed by the Department of Justice for police duties.

In New Zealand, police chiefs are authorized to hire 'temporary constables' to fingerprint prisoners. Civilians have also been employed to operate the police dispatch system as

well as to operate speed cameras.

The South African Police Service (SAPS), which faced a situation of crime explosion after the first democratic election in 1994, resulting in mushrooming of private security agencies, decided on involving the private security sector in policing tasks, even through outright outsourcing of some police functions to such private entities. The police functions that were thus outsourced included forensic and specialized investigations, guarding of government buildings, transportation and guarding of prisoners, court orderly duties, VIP protection, impounding of vehicles, I.T. services and administrative functions like fleet management, maintenance of police buildings, catering, etc. Interestingly, sections of middle level police officers opposed the move to outsource some of these functions on the ground that the police could lose control over such functions. This led to a controversy on outsourcing for some time. Finally, South African authorities concluded that outsourcing was to be seen as a means by which uniformed personnel could be released from their desk bound jobs and other non-core functions so that they could concentrate on the core police jobs.⁸⁰ After much debate and deliberations, the functions that were identified for outsourcing were: (i) guarding of government and police buildings, and managing access control to SAPS buildings, (ii) repairs and maintenance of police buildings, (ii) fleet management, including maintenance and repairs of police vehicles, (iv) guarding and maintenance of seized vehicles in vehicle pounds, (v) maintenance of I.T. hardware and support for software applications, (vi) cleaning, gardening and catering services in all police stations and other police units, and (vii) crew and maintenance personnel for police aircrafts.

Outsourcing experience in police organisations in India

There are very few examples of outright outsourcing of

non-core functions being adopted by police organizations in India. It is only of late that the concept of hiving off of some non-core functions through outsourcing has come to be accepted.

The States of Maharashtra and Andhra Pradesh, in view of the growing pressure on their police forces, have constituted specialized forces, christened as 'Maharashtra Suraksha Dal' and 'Special Protection Force' respectively, for providing security and protection to police undertakings of the State and Central governments, local authorities, banks and other vulnerable establishments or premises, located in the state. These special forces have been created on a model that makes them self-sustaining, since the entire cost of their maintenance is borne by the host establishments. Besides relieving the police forces of the extra burden, these forces also bring to bear on their job the advantage of professional specialization. Besides, their deployment remains uninterrupted and is not disturbed during the periods of heavy VIP bandobusts, crime waves and long drawn public disorder situations.

In Hyderabad city of Andhra Pradesh, certain outsourcing experiments of Ramgopalpet P.S. during 2002-03, showed significant success in the area of outsourcing of certain non-core policing functions. These were:

Manning of reception desk at police station:

The job of manning the reception desk at the police on the round-the-clock basis, which required deployment of three constables, was outsourced to a contractor, who deployed three persons of his own to function in three shifts. They performed all the functions of the receptionist, including receiving visitors and complainants, recording their complaints, and so on, besides receiving all telephone calls and manning the EPABx of the police station. The contractor was paid one-third of the earlier expenditure per month in all, for the job, which earlier

engaged three constables. The constables could be redeployed on more important core policing tasks.

Collection of dead bodies from Hussain Sagar Lake

Recovery of nearly 100 dead bodies found in the Hussain Sagar lake in a year involved deployment of one or more staff members each time, besides an expenditure of approximately Rs.1,000–1250 in each case towards wages to labourers, photography and transportation of the body to the mortuary, etc. This ‘non-core police function’ was outsourced at a total cost of Rs.750/- per dead body, thereby saving not only the expenses but also economizing on time spent by police station personnel on the job.

Typing of case diaries

The typewriting work relating to case diaries, which used to be attended to by 3–4 constables, was often suffering from undue delays, in spite of engagement of some private typists on payment of considerable amounts from time to time. To improve the situation, the work was outsourced to a contractor, who employed his own typists, used his own computer printer, and stationary, all at a cost of Rs.8,000/- per month. This resulted in prompt clearance of all scriptory work relating to cases under investigation, including preparation of crime reviews and notes, while also saving the police station manpower engaged in this work.

Funding of all these outsourcing endeavours was taken care of by utilizing ‘user charges’, collected for providing bandobust for private functions, at rates fixed by the Government of Andhra Pradesh, which are made available to the police department for being used for professional purposes.

Outsourcing recommended by various Commissions/Committees on Police Reform

Some of the high-level Committees and Commissions on Police Reforms, appointed by the Government from time to time, recognizing the value of outsourcing, have recommended

the same for police organizations in India, which have too many responsibilities and far too much of workload, to be shouldered by grossly inadequate manpower. Padmanabhaiah Committee on Police Reforms (2000) recommended that a number of functions which do not require the special capability and knowledge of police functions, can be outsourced so that the police can concentrate on its core functions. The Committee specifically listed out duties such as summons service and antecedent verification in the context of passport applications etc. etc., that should be outsourced or redistributed to other government departments or private agencies”.

The Second Administrative Reforms Commission in its Fifth Report, devoted to Public Order, recommended setting up of a multi-disciplinary task force in each state to draw up a list of non-core police functions that could be outsourced in a phased manner.

The Model Police Act, 2006, elaborated by Soli Sorabjee Committee, contains, under its section 26(5), a specific provision for outsourcing of as many non-core police functions as possible, to enable police officers to concentrate on their core functions.

Current ground situation

These recommendations notwithstanding, the ground situation, as revealed by the response of State DGPs to our letter dated June 30, 2011 does not hold out a very rosy picture. The practice of outsourcing appears to be almost nonexistent in most states except for peripheral housekeeping functions in a few places.

State DGPs' views regarding functions amenable to outsourcing

However, in responses to our query regarding the functions in respect of which outsourcing could be considered a feasible option, quite a long list of items were suggested by Directors General of Police of various states. Prominent among

such functions were:

- (1) Summons service,
 - (2) Traffic regulation,
 - (3) Guarding non-sensitive public and private buildings / premises,
 - (4) Driving of police vehicles,
 - (5) Dak runner duty,
 - (6) Ministerial work in police stations, including maintenance of police station records, and
 - (7) Maintenance and upkeep of police station building and premises, including running of the canteens in PSs
- Further, transfer of functions like escorting of prisoners and guard duty of jails to prison staff was suggested, except in high risk-prone cases.

122. It is evident from the findings of the scholarly worked out by the Administrative Staff College of India, Hyderabad, under the leadership of Mr. Kamal Kumar, IPS (Retd.) that there should be eight hours shift in the police stations to avoid adverse impact on the health and family members of the constables. The report has considered the shifting pattern at international level vis-à-vis Indian condition. The findings of the study are as under:-

“Long duty hours

The analysis of survey data through SPSS along with chisquare statistics, reveals an eye opening picture. It brings out that nearly 90% of police station staff, across the states and across various police station types, presently work for more than 8 hours a day. Further, according to more than 68% of SHOs and over 76% of supervisory officers, staff members of their police stations have to remain on duty for 11 hours or more per day. 27.7% SHOs and 30.4% supervisory officers even reported that their staff worked for more than 14 hours a

day.

As if this is not enough, 73.6% of police station staff indicated that they were not able to avail weekly offs even once a month. Though the SHO respondents were guarded in their responses on this aspect, yet nearly 60% of them confirmed that their staff were either not able to avail weekly offs even once in a month or could avail it, at the most, once or twice in a month.

What makes the situation even worse is that most (over 80%) of the staff are commonly recalled to duty during their off time, to deal with emergencies of law and order, VIP bandobusts or other works. Nearly a half (46.7%) of staff reported that they were called in for duty, on an average, for 8 – 10 times in a month. A majority of SHOs also confirmed this trend.

The situation of inordinately long and irregular working hours for police station staff is, thus, quite serious. Long and irregular work hours have multiple negative impacts on efficient policing, since weary, over-worked and over-exhausted personnel cannot be expected to put in their best in their work.

Health impact of long hours

The study establishes the resultant negative effects of the undue physical strain leading to cumulative physical as well as mental fatigue for personnel. Nearly three-fourths (74%) of respondents among police station staff reported that the current working hour regime led to various kinds of health problems for them. A large majority (over 76%) of SHOs also felt that the current duty hour arrangement was deleterious to health of staff. Most of the specific health problems enumerated by the staff respondents in this regard fall in the domain of occupational hazards and can be directly attributed to long hours on job. Given the health care systems normally applicable to government employees, it could as well be that

government expenses to treat these health consequences, along with the quality of man-hours lost due to their adverse effects, would cost the police organization much more than operating in shifts.

Social impact of long hours

The study also brings out that the current duty-hour regime is not found conducive by police station staff for attending to their personal / family needs and social life and commitments. That a very large proportion (nearly 80%) of staff has averred so, needs to be taken a serious note of. These responses of staff, cutting across ranks, all age groups and educational qualifications groups clearly bring out wide-spread disenchantment with the existing working hour regime. This should ring alarm bells. An equally large number (82%) of SHOs also either specifically agreed with this or preferred to evade the question.

All this, in turn, takes a toll on the morale, motivation and self-esteem of staff. The overall frustration manifests itself in the offensive conduct and behavior with the public by many of them, which leads to erosion of societal image of the police and alienation of the public. Since public cooperation is an essential ingredient of effective policing, all this causes an enormous adverse impact on the quality of police service.

Long hours and Maslow's hierarchy of needs

Good professional policing, as articulated in the cries for police reform, requires cutting edge level police personnel to exhibit personal attributes like morality, lack of prejudice, problem solving capacity, creativity, spontaneity, and so on. These attributes fall in the realm of 'self-actualisation' needs in the Maslow's hierarchy of needs. Maslow asserts that this category of needs cannot fructify unless the needs lower down in the hierarchy are fulfilled, the relevant ones in the context of police personnel's life are sleep (physiological needs), security of

health and of the family (safety needs), friendship and family (needs for love and belonging), and self-esteem, achievement, respect by others (esteem needs). It, thus, needs to be realised that the malaise of inordinately long work hour regime of police personnel, to a large extent, is the root cause of most of the ills dogging good and efficient policing. The problem needs urgent attention.

Perpetuation of such a working hour arrangement holds ugly portents in the short as well as long terms. In the short term, it adversely impacts the quality of day-to-day policing since overworked and overtired personnel are not able to perform to the best of their potential. Inability to maintain a healthy work-life balance affects their morale and motivation, impacting their performance further. The overall frustration results in their rude and offensive behavior with the public. In the long run, the pent up disgruntlement can have an adverse impact on staff discipline and even more dangerous portents. Grueling and tedious work hour regime can also deter many otherwise right kind of individuals from making a choice for police profession, thus adversely affecting the quality of the manpower available for recruitment. All these points came to be highlighted off and on, in the group discussions and personal interviews conducted during the study.

Shift system of working as an alternative

To meet the requirement of efficient policing on 24x7 basis, shift system of working of police stations is an unavoidable imperative. An examination of the international scenario in this regard indicated that the modern police forces, the world over, have their police station working in shifts. In India, shift system of functioning is not recognized in the Police Manuals/Regulations of most of the states, the only honourable exceptions being Andhra Pradesh, Karnataka and Tami Nadu. However, in many areas, shifts of various kinds are

informally in operation. But, the study reveals that in almost all cases, shifts, as contemplated, are not strictly adhered to, due to manpower shortage and heavy workload. This is so even in the states where the Police Manuals prescribe shift functioning.

Possible impact of shift system

The study also attempted to gather the views and opinions of stakeholders at different levels of hierarchy about the likely impact of shift system, if introduced, on police functioning as also on the personal life of staff. An overwhelming majority (over 96%) of police station staff averred that 8-hour shift system would improve police work performance. A similarly large number (over 84%) of them further stated that it would not cause problems of any kind. Almost 90% of SHOs and more than 90% of supervisory police officers also expressed that shift system would improve the quality of policing. Significantly, such positive perceptions in favour of shift system pervade all regions of the country, all police station types, as well as all ranks, age groups, educational qualifications groups and length of service of respondents.

A vast majority (more than 95%) of police station staff and an equally large number (over 96%) of senior supervisory officers also felt that shift working would be more conducive for personal / family life of staff and their social commitments. 96% supervisory officers also opined that shift system would have a positive impact on the health of personnel of their police stations.

Such huge responses in favour of the shift system, and negative perceptions against the current duty hour regime, should leave no room for doubt that the existing chaotic work hour arrangement needs to be urgently replaced with an efficacious shift system of working with regulated hours of work.

Manpower requirement for shift system of functioning

Introduction of shift system would inevitably require some extra manpower, with attendant cost implications. However, the improvement in the quality of policing that regulated hours of work bring about, as established by our case study of the 8-hour duty system of Kerala Police, as also our action research experiment in five police stations of Madhya Pradesh and the case study of the discontinued attempt of Pune police, should make that extra cost a socially useful investment. This, coupled with heightened levels of morale and motivation of staff, would more than compensate the extra expenditure involved in augmentation of manpower.

Coming to estimation of manpower requirement for shift system, calculation for additional requirement of manpower to make up for extra hours of daily duty currently being put in by police station staff and the weekly offs foregone by them, arrived at in the study, works out the additional requirement to be 61% of the present sanctioned strength. This, however, does not take into account the time relating to staff being recalled to duty during their off time / days, which is difficult to calculate. As per the considered assessment of SHOs, elicited in the survey, the extra requirement for introducing an efficacious shift system would be 1.68 times of the existing sanctioned strength of police stations. This means an addition of 68% to the current sanctioned strength. The requirement as assessed by SHOs, more or less, tallies with the estimation based on rationalization of the inordinate workload of staff reflected in the extra man-hours now being spent by them on duty.

It is to be noted that the requirement of extra manpower would get appropriately reduced once measures like much needed re-engineering of some work processes of police stations, greater infusion of technology in police station work, as feasible, introduction of other force multiplier mechanisms

and outsourcing of some of the non-core policing tasks are taken. Some of the specific measures relating to all these aspects have been prominently suggested by respondents in the survey conducted as part of this study. With these and other measures brought out by the study, the requirement of extra manpower is estimated to remain in the range of 50% of the present sanctioned strength.

As matters stand now, the manpower sanctioned for police stations, per se, in the country is woefully small. Calculated on the basis of averages of NCRB data on classification of police stations by sanctioned strength, during 2013, the total manpower sanctioned for all police stations, put together for the entire country works out to the tune of 6,75,115. The total manpower strength of state police forces, as per 'Data on Police Organisations – 2013' published by BPR&D, was 22,09,027. That means the manpower sanctioned for police stations represents only about 30% of the total police strength. This ratio is highly unsatisfactory, given that police station is the cutting edge of policing. Augmentation of police station strength with some 3,37,500 personnel (50% of the present sanctioned strength) would take the ratio of police station manpower to a little over 45% of the total police strength in the States / Union Territories. This would be a more satisfactory state of affairs for ensuring efficient policing.

The extra country-wide requirement of just about 3,37,500 personnel for the introduction of shift functioning in police stations is by no means excessive.

In considering the question of augmentation of manpower, it also needs to be kept in view that the country presently has a very adverse police: population ratio, with just 145 police personnel sanctioned for the policing requirements of 1,00,000 of population. With the addition of 3,37,500 more personnel, as suggested above, the police : population ratio

would become 173 per 1,00,000. This would still be below the United Nations prescribed norm of 222 police personnel per 100,000 of population.

The issue of augmentation of manpower for introducing shift system can be considered from yet another important angle. The current strength of women in police is a meager 97,518, countrywide, as per Data on Police Organisations, as on 01.01.2013, published by BPR&D. This amounts to only 4.4% of total police strength in the country. There is a dire need to enhance this ratio in view of the requirement of greater number of women police personnel for better policing in general and to deal with crime against and committed by women as well as children in particular. Many states have already contemplated 30% reservation for women in police recruitments. States like Tamil Nadu, Uttarakhand and Gujarat and the Union Territories have already made public announcements to that effect. Thus, it is recommended that against the requirement of 3,37,500 additional personnel in police stations for the introduction of shift functioning, all recruitments should be limited to women only. This would take the ratio of women police to a more desirable level of nearly 20%. This step would then serve twin purposes of introduction of shift system in police stations as well as enhancing women's presence for better policing.

Conclusion

The problem of inordinately long working hours of police station personnel is serious. The situation cannot be compared with the requirement of overtime work faced by employees in other government offices and establishments. For them, in most cases, it is an occasional requirement and not an all-365- day affair. Further, they are either paid adequate overtime allowance, or allowed compensatory off time in lieu of extra hours put in. Often, arrangements are also made for

their transport, refreshment, etc. In any case, the overtime working for them is not so prolonged as to adversely affect the overall quality of their work output.

Shift system of functioning in police stations is absolutely imperative for efficient and people friendly policing. It would also improve the work-life balance for police personnel. The study clearly establishes that the implementation of 8-hour shift system is a functionally achievable objective, as brought by our case study of 8-hour duty system of Kerala Police, as also by the action research experiment in five police stations of Madhya Pradesh.

123. According to the observations of the second Administrative Reforms Commission, constables have become 'machines' carrying out the directions of their superiors with little application of mind or initiative. There is constant political interference in transfers, placements and crime investigation, long and difficult working hours, the menial duties they are often forced to perform as orderlies to senior officers, and the emphasis on brawn rather than brain in most situations. A constable devoid of dignity, lacking opportunities for vertical mobility, constantly pressurized by superiors and politicians, often not liked by the public and habituated to easy recourse to violence and force cannot generally be expected to sustain his/her self-esteem or acquire the professional skills to serve the citizens.

124. The constabulary is usually the first interface of the police with the public, any reform to be meaningful has to begin at this level. Radical improvements in the recruitment, training, emoluments, working and living conditions are essential to improve their morale, reduce their frustration and increase their professionalism.

125. The police is the primary agency of the criminal justice system

which protects human rights.

126. The State Government should develop psychological tests for the police force. There should be constant evaluation of the performance, attitudes and behavior of all recruits during training.

127. According to the study undertaken at the behest of Police Research and Development, Govt. of India, as noticed hereinabove, it is mentioned that the study was conducted by the National Productivity Council, 1977 at the behest of the National Police Commission and it was established that the normal working hours of a subordinate police officer on public order and crime investigation duty ranged between 10 and 16 hours per day, seven days a week. There is pressure in the police force to provide VIP bandobust and VIP security work. The complexity of crime work, shortage of manpower in police stations, disorganized functioning of police stations, diversion of manpower on 'attachments' and other duties not related to police station functions, inadequate infusion of technology and non availability of technological tools/aids. The police force should be provided one month's additional salary in lieu of working overtime, as also on holidays and during their weekly off days. The police force should adopt shift system.

128. Most of the health problems occurred due to occupational hazards attributed to long hours on job. The long duty hour takes a toll on the morale, motivation and self-esteem of staff. The overall frustration manifests itself in the offensive conduct and behavior with the public at times.

129. It is the duty cast upon the State to make provisions for

securing just and humane conditions of work under Article 42 of the Constitution of India. Section 46 of the Punjab Police Act, 2007, is required to be read in conformity with the constitutional philosophy and legality. Section 46 cannot be construed to mean that the police force can be deputed without defining their duty hours.

130. Accordingly, the following High Powered Committee is constituted to make recommendations/suggestions how the conditions of service of police force, including, inter-alia, the hours of duty; removal of stagnation; housing; and liberal leave, can be improved :-

- (a) The Principal Secretary Home to the State of Punjab; and
- (b) The Director General of Police, Punjab.

131. The Committee shall make recommendations/suggestions to the State Government within a period of three months from today. The State Government shall duly consider the same within a period of three months after the receipt of recommendations/suggestions. We permit the State Government to implement the recommendations/suggestions made by the High Powered Committee in a phased manner to improve the conditions of service of the police force.

(RAJIV SHARMA)
JUDGE

September 12, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes