The importance of affirmed rights of every human being which are inherent in and essential to the structure of society need no emphasis. To deter breaches thereof, therefore, becomes a sacred duty of the society. Enjoyment of basic human rights are the entitlement of every citizen, and their protection, the obligation of every civilised State. The word "torture", which poses a challenge for the medical, legal and other professions, today has become synonymous with the darker side of human civilisation.

"Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it.

Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself." Adriana P. Bartow

Torture is the very negation of human dignity and cuts at the root of the culture of human rights.

The World Medical Association, in its Tokyo Declaration, 1975, defined "torture" as

"the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons, acting alone or on the orders of any authority to force another person to yield information, to make a confession or for any other reason".

No violation of any one of the human rights has been the subject of so many conventions and declarations as "torture" - all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" which itself is very widespread is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward and the flag of humanity must on each such occasion fly at half mast.

"Torture" ruins the victim physically as well as mentally. The moments of torture flash in the mind of the victim keeping him in horror. For the rest of his life, he feels haunted by the recurrence of such moments which do not let him live a normal life. Torture victims are also in a psychological state of exhaustion. Torture leaves them suffused with the feeling that they are living on borrowed time. In order to really bring the victims to their knees, the torturers leave them with strong feelings of guilt. Torture destroys the self and the very foundations of stability. A person subjected to torture can believe in nothing. In all custodial crimes what is of real concern is not only infliction of bodily pain but the mental agony which a person undergoes during custody.

"Torture" is an international phenomenon and has been the concern of the international community, because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a world-wide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite the pious declaration, the crime continued unabated.

It was nearly two decades after the Universal Declaration of Human Rights that the UN felt the necessity to have a convention addressing torture-related issues. The 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment came into force in 1987. Till June 1999, 113 States have ratified the Convention. A large number of States are yet to sign it. 109 States have accepted the competence of Article 20 which provides that the UN Committee against Torture can make enquiries about allegations of systematic violation of human rights. Compliance, however, has not been quite satisfactory and the UN Secretary General has had an occasion to comment that torture is still being reported even from some countries that have ratified the Convention. It is sad but true that one-third of the 185 UN member States either practise or tolerate its use. According to one survey, torture is prohibited...
expressly or by necessary implication by the Constitutions of 55 nations, including the United States and there is universal abhorrence with which torture is viewed but elimination of torture in all its facets is yet a distant dream.

The United Nations has adopted numerous documents, outlawing torture and advocating legislative, administrative and executive measures which the States should adopt to deal with the victims of torture and for the eradication of torture from society. Deliberations at the UN General Assembly led to the adoption of a resolution in December 1997, proclaiming 26th June as United Nations International Day in support of victims of torture. This day being observed now every year has to some extent contributed to a growing awareness about torture and the need to rehabilitate torture victims. It is indeed a right step to sensitise the issue. A lot more, however, remains to be done.

Fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides "no person shall be deprived of his life or personal liberty except according to procedure established by law". Personal liberty, thus, is a sacred and cherished right under the Indian Constitution. The expression "life or personal liberty" has been held by the Supreme Court to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries.

However, in spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, the growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that the worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resort to third-degree methods including torture and adopt techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of the criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder. Any form of torture or cruel, inhuman or degrading treatment whether it occurs during investigation, interrogation or otherwise needs the severest condemnation. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become a law unto himself thereby leading to anarchism. No civilised nation can permit that to happen.

Generally, the defence put forward by the State in cases of "torture" is in the interest of the society and the security of the State. In India the courts have not permitted sovereign immunity to be pleaded by the State as a defence in response to allegations of "torture" or against any other type of custodial crime, where the State is held vicariously liable for the illegal acts of its officials.

There is no gainsaying that the freedom of an individual must yield to the security of the State. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. The latin maxim salus populi est suprema lex (safety of the people is the supreme law) and salus reipublicae est supra lex (safety of the State is the supreme law) coexist and lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be "right nor just nor fair" and, therefore, it would be impermissible. A crime-suspect must be interrogated - indeed subjected to sustained and scientific interrogation - determined in accordance with the provisions of law. He cannot, however, be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be a qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal.

Torture is also practised by the terrorists on the innocent citizens. Cases of kidnapping, rape, hijacking etc. by the terrorists are occurring almost everyday. It is a serious matter and requires to be tackled properly but the challenge of terrorism must be met with innovative ideas and approach. That a 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. Need, therefore, is to develop scientific methods of investigation and train the investigators properly to interrogate to meet the challenge. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to "terrorism". That would be bad for the State, the community and above all for the rule of law. The State should ensure all its agencies deployed for combating terrorist acts within the bounds of law. It is high time that the world nations unitedly and in a deliberate and disciplined manner decide to meet the challenge posed by international terrorism which threatens world peace.

At the time of accession to ICCPR, India made a reservation to Article 9(5) - the provision on compensation stating that the Indian legal system does not recognise a right to compensation for victims of unlawful arrest or detention. The question is whether our legal system recognises an enforceable right to compensation for the victim of an act of "torture" as envisaged by Article 14 of the Convention.

An enforcesable right to compensation in case of "torture" including "mental torture" inflicted by the State or its agencies is
now a part of the public law regime in India. In many of its decisions, the Supreme Court of India started a new era of compensatory jurisprudence in Indian legal history. This newly-forged weapon to help the torture victims has been sharpened in many of its decisions, like, Rudul Sah v. State of Bihar1, Bhim Singh v. State of J&K2 and Saheli v. Commr. of Police3 to name only a few.

In the case of Nilabati Behera v. State of Orissa4 the Court crystallised the judicial right to compensation, which was further reiterated in D.K. Basu v. State of W.B.5 In D.K. Basu case5 the Court went to the extent of saying that since compensation was being directed by the courts to be paid by the State held vicariously liable for the illegal acts of its officials the reservation to clause 9(5) of ICCPR by the Government of India had lost its relevance. In fact, the sentencing policy of the judiciary in torture-related cases against erring officials in India, has become very strict. For an established breach of fundamental rights, compensation can now be awarded in the exercise of public law jurisdiction by the Supreme Court and High Courts, in addition to private law remedy for tortuous action and punishment to the wrongdoing under criminal law.

In Nilabati Behera case4 the Supreme Court said:

The Court, where the infringement of fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.

It is heartening to note that similar exercise is being done by the judiciaries in many other countries. According to a report published in The Times (London) of Tuesday, 7-9-1999 Israel's Supreme Court overturned a 1987 Israeli report that gave the "Shin Bet" permission to use "moderate physical pressure" and banned the country's secret police from continuing to torture detainees suspected of plotting terrorist acts. Says the report:

"The Court declares the Shin Bet [security service] does not have the authority to shake a person, to force him into a [contorted] position or to kneel in a frog-like position or deprive him of sleep....

Justice Matza said he and his fellow Judges had concluded there was no legal basis for such practices, in response to a petition from human rights organisations."

The Israeli Supreme Court said that the intelligence agency should be bound by the same rules as the ordinary police during their investigations, unless given such powers by Parliament to deal with an emergency.

It goes without saying that no amount of compensation can revive a physical frame battered and shattered by torture. Compensation in such cases is granted as a recompense, not so much to compensate for the loss and suffering, as for punishment to the tormentor and marks society's condemnation of his unpardonable behaviour.

The role of the doctors in this scenario is very critical. Reports suggest that in 20-30% cases, medical personnel are in one way or the other involved in cases of torture. This sad fact that doctors are heavily involved in different aspects of torture, creates deep mistrust towards a profession which is expected to relieve and help the victims of torture. They help in devising techniques to inflict torture, which is physically not visible. Again in the diagnosis process, improper reports can make them party to a heinous crime to screen the offenders.

The role of doctors serving in the military, police, and prison is very crucial. They may be either directly involved or asked to cover up cases of torture. Their wrong/misleading reports allow the torturers to get scot-free. They must sensitise themselves and remain true to the Hippocratic oath. The function of medical doctors is to relieve pain and suffering and not to inflict it. They must remain true to the nobility of their profession and not become parties to the commission of the heinous crime by their acts of omission or commission. Earlier the only interaction between medicine and law was through forensic medicine but with the lapse of time, synthesis began to integrate medicine with law to improve the quality of life of the individual.

Media has an equally important role to play not only to sensitise the community but also to develop public opinion against torture, irrespective of the fact as to who the torturer is. It can help in creating the culture of transparency and accountability of law enforcement agencies, doctors and other professionals who are directly or indirectly involved in the administration of justice.

A high degree of sensitisation and training is an essential component of any programme directed towards prevention of torture in the society. Sensitisation is largely a consequence of awareness, awareness arising out of the manifestation of societal concern and the condemnation of the degrading acts.

Rehabilitation of victims of torture is an important area requiring attention. While internationally a great deal of work has been done in the area of rehabilitation of torture victims very little seems to be happening in India. I learn that there are
only two rehabilitation centres at Delhi and Calcutta. Victims of torture come largely from vulnerable sections of the society; whether they be children, women or members of marginalised or disadvantaged communities. Awareness about the plight of these victims and efforts to rehabilitate them seem to be presently confined to a very small number of non-governmental organisations. This Symposium should help remedy the existing inadequacies. It is my expectation that awareness that is being generated through this event should lead to the setting up of rehabilitation centres, not a few, but many taking into account the size of this country and its population; and equally importantly, the inadequate level of concerns about torture and related issues affecting significant segments of the society.

I have no doubt that the discussion at this Conference would be fruitful and useful and some positive recommendations would be made which can assist the policy planners to take effective measures to deal with this abhorrent practice.

Ladies and gentlemen, thank you for your patience. I have great pleasure in inaugurating this Conference and wishing it a great success.

* On September 22, 1999 at Vigyan Bhavan, New Delhi Return to Text

- (1983) 4 SCC 141 Return to Text
- 1984 Supp SCC 504 Return to Text
- (1990) 1 SCC 422 Return to Text
- (1993) 2 SCC 746 Return to Text
- (1997) 1 SCC 416 Return to Text