HIGH COURT OF MADHYA PRADESH
W.P. No. 13057 of 2020
Arun Sharma Vs. State of M.P. and others

Through Video Conferencing

Gwalior, dated: 02-11-2020

Shri Suresh Agrawal, Counsel for the petitioner.

Shri Purushendra Kaurav, Advocate General for respondents no. 1 and 2.

None for the respondent no. 3, though served.

Shri D.P. Singh, Counsel for the respondents no. 4 and 5.

Shri Naval Kumar Gupta Senior Advocate with Shri Ravi Gupta, and Shri Prashant Sharma Advocate *amicus curiae.*

1. This petition under Article 226 of the Constitution of India has been filed seeking the following relief(s) :

> It is, therefore, most humbly prayed that the petition filed by the Petitioner may kindly be allowed and respondent no.1 and 2 may kindly be directed to take effective action against the respondent no.3 to 5 and pass appropriate order so that the petitioner can take justice.
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> Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper under the fact and circumstances existing in the present case. Further, compensation be granted to the petitioner from the respondents authorities.
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> Award the cost of this writ petition in favor of the petitioner throughout.

2. The necessary facts in short are that the petitioner is a tenant in a shop. On 25-7-2020, the landlady of the said shop, made a complaint to the respondent no. 3/S.H.O., Police Station Bahodapur, Distt. Gwalior, alleging that the petitioner is neither vacating the

shop nor is making payment of rent and has also threatened that he would encroach upon the remaining house of the landlady. Thus, it was prayed that the shop be got vacated and the arrears of rent be paid to the landlady. The respondent no. 3, marked the said complaint to the respondent no. 4 for conducting an enquiry and it is alleged that thereafter, the respondents no. 4 and 5 forcibly evicted the petitioner from the shop on 25-7-2020 itself and was also beaten by the respondent no.4. The goods including the furniture of the shop was taken to the police station where the petitioner was compelled to give an undertaking that he would vacate the shop and accordingly, the goods belonging to the petitioner were returned by the respondents. Thereafter, on 14-8-2020, the respondent no. 3 and 5 took the petitioner in custody, and got his uncovered face photograph published in the newspapers as well as on social media, by projecting him as a hard core criminal. On a complaint made to the Superintendent of Police, Gwalior, an enquiry was conducted and it was found that the petitioner is an innocent person having no criminal antecedents and accordingly, he was released. It is the stand of the respondents no. 1 and 2 that one person with similar name was wanted in a criminal case which was registered in the year 2011 and a reward of Rs. 5,000/- was declared by the Superintendent of Police, Gwalior by order dated 13-8-2020 and under mistaken identity, the petitioner was wrongly taken into custody. The respondent no.3 was

placed under suspension and the news with regard to his suspension was duly published in the news papers.

3. It appears that thereafter, without conducting any enquiry or without passing any order of punishment, the suspension of the respondent no. 3 was revoked by order dated 28-8-2020 and he was given posting in some other police station. However, the order of revocation of suspension order of the respondent no.3 and his posting order have not been placed on record.

4. Only after the notices of this writ petition were received by the respondent no.2, it appears that just 2 days prior to filing of 1st compliance report, a punishment of fine of Rs. 5000/- was imposed on the respondent no. 3 and the respondent no. 5 was saddled with the punishment of censure.

5. With regard to the incident, which took place on 25-7-2020, a preliminary enquiry was conducted by Add. Superintendent of Police (Central), Gwalior City, Gwalior and on the basis of the findings recorded in the said preliminary enquiry report, a departmental charge sheet has been issued against the respondents no. 4 and 5 on the allegations, that they were involved in forcible eviction of the petitioner from the shop in question, as well as the act of bringing the belongings of the petitioner to the police station, is a glaring example of misconduct.

6. With regard to the law regulating the disclosure of identity of

an accused/suspect in the news paper, the respondents no.1 and 2 relied upon the circular dated 2-1-2014 issued by the Director General of Police.

7. After finding that the 1st and 2nd compliance report filed by the police is not satisfactory, this Court by its order dated 20-10-2020, requested the Advocate General, State of M.P. to appear on behalf of the respondents no. 1 and 2 and also requested Shri Naval Kumar Gutpa, Senior Advocate and Shri Prashant Sharma, Advocates to argue the matter as *amicus curiae* as important question of law arises in the present case and accordingly, after considering the judgment passed by the Supreme Court in the case of **Mehmood Nayyar Azam Vs. State of Chhattisgarh** reported in **(2012) 8 SCC 1** framed the following issue:

> "Whether the State Govt. by issuing an exeuctive instruction, can violate the Fundamental Rights of an accused as enshrined under Article 21 of the Constitution of India, by getting their uncovered faces published in the News paper or in any other form of media or by parading them in Society etc.?"

Apart from the above mentioned legal question, following issues were also framed :

> **(I)** Whether gross violation of rights and privacy of an innocent citizen of India and tarnishing his reputation is a minor mistake or serious misconduct?
> **(II)** Why due publicity of revocation of suspension of the Sub Inspector was not given in the newspaper thereby informing the general public that even in a

case of gross violation of rights and privacy of an innocent person, a police officer can get away very easily?

(III) Furthermore, once the respondents have already admitted that they have grossly violated the rights and privacy of an innocent person, still then the return is completely silent on the question of payment of compensation under Article 21 of the Constitution of India?

(IV) Whether any enquiry into the allegations made against the respondents no. 4 and 5 was made or not and if so, its conclusion.

(V) It is mentioned in the punishment order dated 14-10-2020, that although the petitioner was not arrested, but he was detained in police station. Whether detention of a person in a police station without his formal arrest was permissible, because according to the respondents no. 1 and 2, the petitioner was detained as a person with similar name was wanted in a criminal case which was registered in the year 2011.

(VI) It has also been mentioned in the suspension order, that the news pertaining to the detention and photographs of the petitioner were uploaded on Social Media. The respondents no.1 and 2 are further directed to clarify that which law permits them to upload the photographs of an accused on Social Media?

Whether Fundamental Rights of a suspect can be violated by the Police by publishing his photographs in news papers, or on any digital platform as well as by parading him in General Public.

8. Shri Naval Kumar Gupta, Senior Advocate as well as Shri Prashant Sharma, *amicus curiae* submitted that privacy, reputation and dignity of a person is an integral part of Article 21 of the Constitution of India and cannot be taken away merely for the reason, that the police has taken him in custody on the allegation of having committed an offence. It is further submitted that violation of fundamental right of a citizen of India would make the State liable

for payment of compensation. It is further submitted that Parading of an accused in general public, or publication of his personal details along with his covered or uncovered face in the News Papers or on Social Site or on any digital platform, would be violative of Article 21 of the Constitution of India. It is further submitted that it is a well established principle of law that unless and until, a person is convicted, his innocence has to be presumed, and the police cannot tarnish the image of any citizen of India by projecting him as a hardcore criminal. It is further submitted that the act of police in getting the photographs of the suspects published in the news papers or on any digital platform is nothing but an attempt to tap their back. It is submitted that if the police is really interested in ensuring the conviction of a person, then it must not only ensure the safety of the witnesses, but must also ensure, that there is no delay in the trial due to non-appearance of prosecution witnesses, but the ground reality is that various trials are being adjourned for years together only because of the fact that the police witnesses donot appear before the Trial Court or the summons/bailable warrants/warrants issued against the witnesses are not served by the prosecution. It is further submitted that not only the speedy trial is a fundamental right of an accused, but speedy trial is also in the interest of society, because there would be less opportunities to pressurize or win over the witnesses. Further, an undertial is not entitled for remission, whereas a convicted person

is entitled for remission as per the remission policy of the State Govt. The *amicus curiae* have relied upon the judgments passed by the Supreme Court in the cases of **K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India** reported in **(2019) 1 SCC 1, K.S. Puttaswamy (Privacy-9 J.) v. Union of India,** reported in **(2017) 10 SCC 1, C. Golaknath Vs. State of Punjab** reported in **AIR 1950 SC 27, Maneka Gandhi Vs. Union of India** reported in **AIR 1978 SC 597, Francis Caralie Vs. Union Territory of Delhi,** reported in **AIR 1981 SC 746, Sukhwant Singh and others Vs. State of Punjab** reported in **(2009) 7SCC 559, Joginder Kumar Vs. State of U.P.** Reported in **(1994) (4) SCC 677, Vishwanath Agarwal Vs. Sarla Vishwanath Agarwal** reported in **(212) 7 SCC 288, Hardeep Singh Vs. State of M.P.** reported in **(2012) 1 SCC 748, D.K. Basu Vs. State of W.B.** reported in **AIR 1997 SC 610, Kiran Bedi Vs. Committee of Inquiry** reported in **AIR 1989 SC 714, Mehmood Nayyar Azam Vs. State of Chhatisgarh** reported in **(2012) 8 SCC 1, Delhi Judicial Service Association Vs. State of Gujarat** reported in **(1991) 4 SCC 406, Sunil Batra Vs. Delhi Adm** reported in **(1978) 4 SCC 494, Sube Singh Vs. State of Haryana** reported in **(1993) 2 SCC 746, Rudal Shah Vs. State of Bihar** reported in **AIR 1983 SC 1086, K. Elango Vs. State of Tamil Nadu** reported in **2013 SCC Online Mad 1439, Mr. Satish Banwarilal Sharma Vs. U.T. Of**

Daman and Diu reported in **2016 SCC Online Bom 1033, Prakash Singh and others Vs. Union of India and others** reported in **(2006) 8 SCC 1, Sahihi Mohammad Vs. State of Himachal Pradesh** reported in **(2018) 2 SCC 801** and **Bhim Singh Vs. State of J&K** reported in **(1985) 4 SCC 677 as well as order dated 25-6-2020** passed by this Court in the case of **Jaipal Singh Vs State of M.P.** in **M.Cr.C. No. 10547 of 2020.**

9. Shri Purushendra Kaurav, Advocate General, submitted that disclosure of identity in any form (either by disclosure of his personal details or publication of his photographs, whether covered or uncovered face, either in news paper or on any digital platform, would certainly violate the fundamental right as enshrined under Article 21 of the Constitution of India. It is further submitted that although there is a circular dated 2-1-2014 with regard to the production of acccused persons before the Media, but there is no executive instruction for parading the accused persons/suspect in general public.

10. Shri D.P. Singh, Counsel for the respondents no. 4 and 5 submitted that since, the respondent no. 4 was asked by the respondent no. 3 to enquire the complaint dated 25-7-2020, therefore, she acted on the instructions of the respondent no.3. However, it was denied that the shop was got forcibly vacated by her.

11. The respondent no. 3 has neither appeared/represented nor

filed any return.

12. Heard the learned Counsel for the petitioner, respondents no. 1 &2, Counsel for respondents no. 4&5, as well as amicus curiae on the above mentioned issue.

13. The Supreme Court in the case of **State of Maharashtra Vs. Saeed Sohail Sheikh** reported in **(2012) 13 SC 192** has held as under:

> **39.** In a country governed by the rule of law police excesses whether inside or outside the jail cannot be countenanced in the name of maintaining discipline or dealing with anti-national elements. Accountability is one of the facets of the rule of law. If anyone is found to have acted in breach of law or abused his position while exercising powers that must be exercised only within the parameters of law, the breach and the abuse can be punished. That is especially so when the abuse is alleged to have been committed under the cover of authority exercised by people in uniform. Any such action is also open to critical scrutiny and examination by the courts.
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> **40.** Having said that we cannot ignore the fact that the country today faces challenges and threats from extremist elements operating from within and outside India. Those dealing with such elements have at times to pay a heavy price by sacrificing their lives in the discharge of their duties. The glory of the constitutional democracy that we have adopted, however, is that whatever be the challenges posed by such dark forces, the country's commitment to the rule of law remains steadfast. Courts in this country have protected and would continue to protect the ideals of the rights of the citizen being inviolable except in accordance with the procedure established by law.
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> (Underline supplied)

14. The Supreme Court in the case of **Delhi Judicial Service**

Association (Supra) has held as under :

> 39.....The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been the subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police to take maximum care in exercising that power. The police must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated. See *Sunil Batra* v. *Delhi Administration*. In *Prem Shankar Shukla case* this Court considered the question of placing a prisoner under handcuff by the police. The Court declared that no prisoner shall be handcuffed or fettered routinely or merely for the convenience of custody or escort. The Court emphasised that the police did not enjoy any unrestricted or unlimited power to handcuff an arrested person. If having regard to the circumstances including the conduct, behaviour and character of a prisoner, there is reasonable apprehension of prisoner's escape from custody or disturbance of peace by violence, the police may put the prisoner under handcuff. If a prisoner is handcuffed without there being any justification, it would violate prisoner's fundamental rights under Articles 14 and 19 of the Constitution. To be consistent with Articles 14 and 19 handcuffs must be the last refuge as there are other ways for ensuring security of a prisoner. In *Prem Shankar Shukla case*, Krishna Iyer, J. observed: (SCC p. 529, para 1)

> "If *today* freedom of the forlorn person falls to the police somewhere, *tomorrow* the freedom of many may fall elsewhere with none to whimper *unless* the court process invigilates in time and polices the police before it is too late."
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> (emphasis in original)

15. The Supreme Court in the case of **Bhim Singh (Supra)** has held as under :

> 2.....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.....

16. Thus, where any abuse of power is committed by police, then such an action is open for scrutiny by the Court, as the men in uniform are the custodians of law and must show great respect for the liberty and privacy of the citizens. In the present case, in view of the findings recorded by the Superintendent of Police, Gwalior in punishment order dated 14-10-2020, as well as in view of the observations regarding preliminary enquiry report by Add. S.P., in the charge sheet issued against the respondents no. 4 and 5, this Court is of the view that the allegations leveled against the respondents no. 3 to 5, are glaring example of police atrocities which cannot be ignored by this Court, specifically when, not only the police personals are alleged to have forcibly evicted the petitioner from his shop without there being any order of the Court, but also kept him in illegal

detention.

17. The question as to whether the Privacy/Dignity/reputation of a citizen of India is an intergral facet of Article 21 of the Constitution of India or not, is no more *res integra.*

18. The Supreme Court in the case of **Mehmood Nayyar Azam (Supra)** has held as under :

> **19.** We have referred to the aforesaid paragraphs of *D.K. Basu case* to highlight that this Court has emphasised on the concept of mental agony when a person is confined within the four walls of police station or lock-up. Mental agony stands in contradistinction to infliction of physical pain. In the said case, the two-Judge Bench referred to Article 5 of the Universal Declaration of Human Rights, 1948 which provides that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Thereafter, the Bench adverted to Article 21 and proceeded to state that the expression "life or personal liberty" has been held 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. Reference was made to Article 20(3) of the Constitution which postulates that a person accused of an offence shall not be compelled to be a witness against himself.
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> **20.** It is worthy to note that in *D.K. Basu*, the concern shown by this Court in *Joginder Kumar* v. *State of U.P.* was taken note of. In *Joginder Kumar case* this Court voiced its concern regarding complaints of violation of human rights during and after arrest. It is apt to quote a passage from the same: (*Joginder Kumar case*, SCC pp. 263-64, paras 8-9)
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> "*8*. The horizon of human rights is expanding. At the same time, the crime rate is also increasing. Of late, this Court has been receiving complaints about violation of human rights because of indiscriminate arrests. How are we to strike a balance between the two?
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> *9*. A realistic approach should be made in this

direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first — the criminal or society, the law violator or the law abider…."

21. After referring to *Joginder Kumar*, A.S. Anand, J. (as His Lordship then was), dealing with the various facets of Article 21 in *D.K. Basu case*, stated that any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. 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 law unto himself thereby leading to anarchy. No civilised nation can permit that to happen, for a citizen does not shed off his fundamental right to life, the moment a policeman arrests him. The right to life of a citizen cannot be put in abeyance on his arrest. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

* * * *

25. It needs no special emphasis to state that when an accused is in custody, his fundamental rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Article 21 of the Constitution and a fortiori, it includes the right to live with human dignity and all that goes along with it. It has been so stated in *Francis Coralie Mullin* v. *UT of Delhi* and *D.K. Basu*.

26. In *Kharak Singh* v. *State of U.P.* this Court approved the observations of Field, J. in *Munn* v. *Illinois*: (*Kharak Singh case*, AIR p. 1301, para 15)

"*15*. … '… By the term 'life' as here [Article 21] used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed.' (L Ed p. 90)"

27. It is apposite to note that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience.

28. In *Arvinder Singh Bagga* v. *State of U.P.* it has been opined that torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the police.

29. At this stage, it is seemly to refer to the decisions of some of the authorities relating to a man's reputation which forms a facet of right to life as engrafted under Article 21 of the Constitution.

30. In *Kiran Bedi* v. *Committee of Inquiry* this Court reproduced an observation from the decision in *D.F. Marion* v. *Davis*: (*Kiran Bedi case*, SCC p. 515, para 25)

"*25*. … 'The right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.'"

31. In *Port of Bombay* v. *Dilipkumar Raghavendranath Nadkarni* it has been ruled that right to reputation is a facet of right to life of a citizen under Article 21 of the Constitution.

32. In *Selvi* v. *State of Karnataka*, while dealing with the involuntary administration of certain scientific techniques, namely, narcoanalysis, polygraph examination and the brain electrical activation profile test for the purpose of improving investigation efforts in criminal cases, a three-Judge Bench opined that the compulsory administration of the impugned techniques constitutes "cruel, inhuman or degrading treatment" in the context of Article 21. Thereafter, the Bench adverted to what is the popular perception of torture

and proceeded to state as follows: (SCC p. 376, para 244)

"*244*. … 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 long-lasting consequences. [A similar conclusion has been made in the following paper: Marcy Strauss, 'Criminal Defence in the Age of Terrorism — Torture'.]"

33. After so stating, the Bench in its conclusion recorded as follows: (*Selvi case*, SCC p. 382, para 263)

"*263*. … We have also elaborated how the compulsory administration of any of these techniques is an unjustified intrusion into the mental privacy of an individual. It would also amount to 'cruel, inhuman or degrading treatment' with regard to the language of evolving international human rights norms."

34. Recently in *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, although in a different context, while dealing with the aspect of reputation, this Court has observed as follows: (SCC p. 307, para 55)

"*55*. … reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity."

35. We have referred to these paragraphs to understand how with the efflux of time, the concept of mental torture has been understood throughout the world, regard being had to the essential conception of human dignity.

36[††]**.** From the aforesaid discussion, there is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history". The Constitution as

the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector. That is why, an investigator of a crime is required to possess the qualities of patience and perseverance as has been stated in *Nandini Satpathy* v. *P.L. Dani*.

37. In *Delhi Judicial Service Assn.* v. *State of Gujarat*, while dealing with the role of police, this Court condemned the excessive use of force by the police and observed as follows: (SCC pp. 454-55, para 39)

"*39*. The main objective of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect the citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police … [and it] must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated."

38. It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police

officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from *D.K. Basu*: (SCC pp. 434-35, para 33)

"*33*. There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the courts. 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 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, would be impermissible, being offensive to Article 21. Such 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 qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal."

(emphasis in original)

19. The Supreme Court in the case of **K.S. Puttaswamy (Privacy-9 J.) (Supra)** has held as under :

652. The reference is disposed of in the following terms:

652.1. The decision in *M.P. Sharma* which holds that the right to privacy is not protected by the Constitution stands overruled;

652.2. The decision in *Kharak Sing* to the extent that it

holds that the right to privacy is not protected by the Constitution stands overruled;

652.3. The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.

652.4. Decisions subsequent to *Kharak Singh* which have enunciated the position in para 652.3, above lay down the correct position in law.

20. The Supreme Court in the case of **K.S. Puttaswamy (Aadhaar-5 J.) (Supra)** has held as under :

141. Charles Bernard Renouvier, a French Philosopher, said:

> "Republic is a State which best reconciles dignity of individual with dignity of everyone."

142. Dignity extended to all citizens involves the idea of communitarism. A little earlier in 1798, Friedrich Schiller, a German poet of freedom and philosophy, brought out the connection between dignity and social condition in his work "*Wurde des Menschen*". He said "(g)ive him food and shelter; when you have covered his nakedness, dignity will follow by itself". It was during the period that abolition of slavery became an important political agenda. Slavery was considered as an affront to human dignity.

143. The Universal Declaration of Human Rights (UDHR) recorded in the Preamble recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace. It included freedom from fear and want as amongst the highest aspirations of the common people. This is of course subject to resources of each State. But the realisation is contemplated through national effort and international cooperation. Evidently, the UDHR adopts a substantive or communitarian concept of human dignity. The realisation of intrinsic worth of every human being, as a member of society through national efforts as an indispensable condition has been recognised as an important human right. Truly speaking, this is directed towards the deprived, downtrodden and have-nots.

> **144.** We, therefore, have to keep in mind humanistic concept of human dignity which is to be accorded to a particular segment of the society and, in fact, a large segment. Their human dignity is based on the socio-economic rights that are read into the fundamental rights, as already discussed above.
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> **145.** When we read socio-economic rights into human dignity, the community approach also assumes importance along with individualistic approach to human dignity. It has now been well recognised that at its core, human dignity contains three elements, namely, intrinsic value, autonomy and community value. These are known as core values of human dignity. These three elements can assist in structuring legal reasoning and justifying judicial choices in "hard cases". It has to be borne in mind that human dignity is a constitutional principle, rather than free-standing fundamental rights. Insofar as intrinsic value is concerned, here human dignity is linked to the nature of being.....

21. The Supreme Court in the case of **Prithipal Singh v. State of Punjab,** reported in **(2012) 1 SCC 10** has held as under :

> ***Police Atrocities***
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> **25.** Police atrocities in India had always been a subject-matter of controversy and debate. In view of the provisions of Article 21 of the Constitution, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise. The wrongdoer is accountable and the State is responsible if a person in custody of the police is deprived of his life except in accordance with the procedure established by law. However, when the matter comes to the court, it has to balance the protection of fundamental rights of an individual and duties of the police. It cannot be gainsaid that freedom of an individual must yield to the security of the State. The Latin maxim *salus populi est suprema lex*—the safety of the people is the supreme law; and *salus reipublicae suprema lex*—the safety of the State is the supreme law, coexist. However, the doctrine of

the welfare of an individual must yield to that of the community.

26. The right to life has rightly been characterised as "'supreme' and 'basic'; it includes both so-called negative and positive obligations for the State". The negative obligation means the overall prohibition on arbitrary deprivation of life. In this context, positive obligation requires that the State has an overriding obligation to protect the right to life of every person within its territorial jurisdiction. The obligation requires the State to take administrative and all other measures in order to protect life and investigate all suspicious deaths.

27. The State must protect the victims of torture, ill-treatment as well as the human rights defender fighting for the interest of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences psychologically. The problems of acute stress as well as a post-traumatic stress disorder and many other psychological consequences must be understood in the correct perspective. Therefore, the State must ensure prohibition of torture, cruel, inhuman and degrading treatment to any person, particularly at the hands of any State agency/police force.

28. In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provides for protection of all rights to every individual. It inhibits illegal detention. Torture and custodial death have always been condemned by the courts in this country. In its 113th Report, the Law Commission of India recommended the amendment to the Evidence Act, 1872 (hereinafter called "the Evidence Act"), to provide that in case of custodial injuries, if there is evidence, the court may presume that injury was caused by the police having the custody of that person during that period. Onus to prove the contrary is on the police authorities. Law requires for adoption of a realistic approach rather than narrow technical approach in cases of custodial crimes. (Vide *Dilip K. Basu* v. *State of W.B.*, *N.C. Dhoundial* v. *Union of India* and *Munshi Singh Gautam* v. *State of M.P.*)

* * * *

> **33.** Undoubtedly, this Court has been entertaining petition after petition involving the allegations of fake encounters and rapes by police personnel of States and in a large number of cases transferred the investigation itself to other agencies and particularly CBI. (See *Rubabbuddin Sheikh* v. *State of Gujarat*, *Jaywant P. Sankpal* v. *Suman Gholap* and *Narmada Bai* v. *State of Gujarat*.)
>
> **34.** Thus, in view of the above, in the absence of any research/data/material, a general/sweeping remark that a "substantial majority of the population in the country considered the police force as an institution which violates human rights" cannot be accepted. However, in a given case if there is some material on record to reveal the police atrocities, the court must take stern action against the erring police officials in accordance with law.

22. The Supreme Court in the case of **Kishore Samrite v. State of U.P.,** reported in **(2013) 2 SCC 398** has held as under :

> **58.** The term "person" includes not only the physical body and members but also every bodily sense and personal attribute among which is the reputation a man has acquired. Reputation can also be defined to be good name, the credit, honour or character which is derived from a favourable public opinion or esteem, and character by report. The right to enjoyment of a good reputation is a valuable privilege of ancient origin and necessary to human society. <u>"Reputation" is an element of personal security and is protected by the Constitution equally with the right to enjoyment of life, liberty and property</u>. Although "character" and "reputation" are often used synonymously, but these terms are distinguishable. "Character" is what a man is and "reputation" is what he is supposed to be in what people say he is. "Character" depends on attributes possessed and "reputation" on attributes which others believe one to possess. The former signifies reality and the latter merely what is accepted to be reality at present. (Ref. *Kiran Bedi* v. *Committee of Inquiry* and *Nilgiris Bar Assn.* v. *T.K. Mahalingam*)..... (underline supplied)

23. The Supreme Court in the case of **Subramanian Swamy v. Union of India,** reported in **(2016) 7 SCC 221** has held as under :

> **23.4.** "Defamation", according to *Chambers Twentieth Century Dictionary*, means to take away or destroy the good fame or reputation; to speak evil of; to charge falsely or to asperse. According to Salmond:
>
> > "The wrong of defamation, consists in the publication of a false and defamatory statement concerning another person without lawful justification.
>
> * * * *
>
> **51.** In *Om Prakash Chautala* v. *Kanwar Bhan* it has been held that:
>
> > "*1*. … Reputation is fundamentally a glorious amalgam and unification of virtues which makes a man feel proud of his ancestry and satisfies him to bequeath it as a part of inheritance on posterity. It is a nobility in itself for which a conscientious man would never barter it with all the tea of China or for that matter all the pearls of the sea. The said virtue has both horizontal and vertical qualities. When reputation is hurt, a man is half-dead. It is an honour which deserves to be equally preserved by the downtrodden and the privileged. The aroma of reputation is an excellence which cannot be allowed to be sullied with the passage of time. It is dear to life and on some occasions it is dearer than life. And that is why it has become an inseparable facet of Article 21 of the Constitution. No one would like to have his reputation dented, and it is perceived as an honour rather than popularity."
>
> **52.** In *State of Gujarat* v. *High Court of Gujarat*, the Court opined:
>
> > "*99*. … An honour which is lost or life which is snuffed out cannot be recompensed.…"

24. The Supreme Court in the case of **Kiran Bedi (Supra)** has held as under :

> **24.** In *Corpus Juris Secundum*, Vol. 77 at p. 268 is to

be found the statement of law in the following terms:

> It is stated in the definition Person, 70 C.J.S. p. 688 note 66 that legally the term "person" includes not only the physical body and members, but also every bodily sense and personal attribute, among which is the reputation a man has acquired. Blackstone in his *Commentaries* classifies and distinguishes those rights which are annexed to the person, *jura personarum*, and acquired rights in external objects, *jura rerum*; and in the former he includes personal security, which consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. And he makes the corresponding classification of remedies. The idea expressed is that a man's reputation is a part of himself, as his body and limbs are, and reputation is a sort of right to enjoy the good opinion of others, and it is capable of growth and real existence, as an arm or leg. Reputation is, therefore, a personal right, and the right to reputation is put among those absolute personal rights equal in dignity and importance to security from violence. According to Chancellor Kent as a part of the rights of personal security, the preservation of every person's good name from the vile arts of detraction is justly included. The laws of the ancients, no less than those of modern nations, made private reputation one of the objects of their protection.

The right to the enjoyment of a good reputation is a valuable privilege, of ancient origin, and necessary to human society, as stated in Libel and Slander Section 4, and this right is within the constitutional guaranty of personal security as stated in Constitutional Law Section 205, and a person may not be deprived of this right through falsehood and violence without liability for the injury as stated in Libel and Slander Section 4.

Detraction from a man's reputation is an injury to his personality, and thus an injury to reputation is a personal injury, that is, an injury to an absolute personal right.

25. In *D.F. Marion* v. *Davis*, it was held:

> "The right to the enjoyment of a private

> reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property."

25. The Supreme Court in the case of **Malak Singh and others Vs. State of Punjab and Haryana and others** reported in **AIR 1981 SC 760** has held as under :

> **7.** As we said, discreet surveillance of suspects, habitual and potential offenders, may be necessary and so the maintenance of history sheet and surveillance register may be necessary too, for the purpose of prevention of crime. History sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register.....

26. The Supreme Court in the case of **People's Union for Civil Liberties (PUCL) v. Union of India,** reported in **(1997) 1 SCC 301** has held as under :

> **14.** Article 21 of the Constitution has, therefore, been interpreted by all the seven learned Judges in *Kharak Singh case*[1] (majority and the minority opinions) to include that "right to privacy" as a part of the right to "protection of life and personal liberty" guaranteed under the said Article.
>
> **15.** In *Gobind* v. *State of M.P.* a three-Judge Bench of this Court considered the constitutional validity of Regulations 855 and 856 of the Madhya Pradesh Police Regulations which provided surveillance by way of several measures indicated in the said regulations. This Court upheld the validity of the regulations by holding that Article 21 was not violated because the impugned regulations were "procedure established by law" in terms of the said Article.

> **16.** In *R. Rajagopal* v. *State of T.N.* Jeevan Reddy, J. speaking for the Court observed that in recent times right to privacy has acquired constitutional status. The learned Judge referred to *Kharak Singh case*, *Gobind case* and considered a large number of *American and English cases* and finally came to the conclusion that "the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a 'right to be let alone'." A citizen has a right "to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters".
>
> **17.** We have, therefore, no hesitation in holding that right to privacy is a part of the right to "life" and "personal liberty" enshrined under Article 21 of the Constitution. Once the facts in a given case constitute a right to privacy, Article 21 is attracted. The said right cannot be curtailed "except according to procedure established by law".

27. The Supreme Court in the case of **Inhuman Conditions in 1382 Prisons, In re,** reported in **(2017) 10 SCC 658** has held as under :

> **51.** This Court has time and again emphasised the importance of Article 21 of the Constitution and the right to a life of dignity. There must be a genuine desire to ensure that the guarantee to a life of dignity is provided to the extent possible even in prisons, otherwise Article 21 of the Constitution will remain a dead letter. It must be appreciated by the State that the common person does not violate the law for no reason at all. It is the circumstances that lead to a situation where there is a violation of law. On many occasions, such a violation may be of a trivial nature or may be a one-time aberration and, in such circumstances, the offender has to be treated with some degree of humanity. At least in such cases, retribution and deterrence cannot be an answer to the offence and the offender. Unless the State changes this mindset and takes steps to give meaning to life and liberty of every prisoner, prison reforms can never be effective or long lasting.

28. The Supreme Court in the case of **Ramlila Maidan Incident, In re.** reported in **(2012) 5 SCC** has held as under :

> **30.** No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:
>
> (*a*) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.
>
> (*b*) Each restriction must be reasonable.
>
> (*c*) A restriction must be related to the purpose mentioned in Article 19(2).

29. Thus, it is clear that *privacy/reputation/dignity* of a citizen of India, are integral part of Article 21 of the Constitution of India and cannot be infringed, unless and until a restriction is imposed by or under the authority of law and such restriction should be reasonable having nexus with object sought to be achieved. The *Privacy/ reputation/dignity* of any person, including a hardcore cirminal cannot be violated, unless and until the reasonable restriction permits to do so. Even if a person is a hardcore criminal, but still his details/history sheet/survellience has to be kept discreet and there is no question of posting the photogrpahs of history sheeters even at police stations. Further, the Counsel for the State could not point out any reasonable nexus with the object sought to be achieved. Publishing of a photograph of a criminal or parading in general public, even prior to his conviction, may defame him in the society,

but it will never prove to be an element of deterence. Further as held by Supreme Court in the case of **Inhuman Conditions in 1382 Prisons, In re (Supra),** retribution and deterrence cannot be an answer to the offence and the offender. The State must change its mindset to give true meaning to life and liberty of every offender. Further, the conviction of a person cannot be recorded on the basis of the statements of the witnesses recorded under Section 161 of Cr.P.C. Any evidence collected by the Police is not a substantive piece of evidence. Therefore, tarnishing the reputation of a person, by the police, on the basis of its own investigation, amounts to prejudging the correctness of the allegations, which is unknown to Indian Law, and a person is presumed to be innocent, unless and until he is convicted. Thus, without there being any statutory provision putting reasonable restrictions, the police cannot violate the fundamental rights i.e., *Privacy/dignity/reputation* of a citizen of India, on the basis of an executive instruction issued by the Director General of Police.

30. Now, the circular dated 2-1-2014 issued by the Director General of Police with regard to briefing the media shall be considered in the light of the law laid down by the Supreme Court.

31. The Circular dated 2-1-2014 reads as under :

गोपनीय विशेष शाखा, मध्यप्रदेश, भोपाल
क्रमांक–विशा/7/मिस/एफ–133/2014–19 (6), दिनांक 2.01.2014

HIGH COURT OF MADHYA PRADESH
W.P. No. 13057 of 2020
Arun Sharma Vs. State of M.P. and others

प्रति,

समस्त जोनल पुलिस महानिरीक्षक
समस्त रेजं उप पुलिस महानिरीक्षक
समस्त पुलिस अधीक्षक,
समस्त सेनानी विसबल,
समस्त रेल पुलिस अधीक्षक,
मध्यप्रदेश।

विषयः— पुलिस द्वारा मीडिया को ब्रीफिंग करने के संबंध में।

संदर्भः— 1. अअवि शाखा का परिपत्र क्र
अअवि/विधि(1)/misc/78/08/ 690/2008, दिनांक 19.8.2008,
2. शिकायत शाखा का परिपत्र क्र.
पुमु/शिकायत/विविध/4910/08, दिनांक 30.10.2008,
3. अअवि शाखा का परिपत्र क्र.
अअवि/विधि/1/विविध/74/09/ 872/09, दिनांक 30.11.2009,
4. विशेष शाखा का परिपत्र क्र.
विशा/4/प्रेस/2011—21—(419), दिनांक 4.7.2011

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पुलिस और मीडिया के संबंध, पुलिस के द्वारा किए गए अच्छे व सकारात्मक कार्य, अच्छी पतारसी व विवेचना में की गई मेहनत को, जनता तक पहुंचाने में सहायक होते हैं। साथ ही अपराध घटित होने व कानून—व्यवस्था की स्थिति निर्मित होने के उपरांत स्थिति को सही परिप्रेक्ष्य में प्रस्तुत करने आरोपियों को पकड़ने के लिए किए गए प्रयासों से अवगत कराने, अनावश्यक अप्रिय स्थिति उत्पन्न होने से रोकने, अपराधों की थोकथाम के लिए जनता को सजग करने व आतंकी घटनाओं से चौकन्ने रहने के लिए मीडिया का सहयोग लेना चाहिए। प्रेस कान्फ्रेंस व प्रेस रिलीज, पुलिस और मीडिया के बीच के संवाद के महत्वपूर्ण घटक हैं।

पूर्व में जारी संदर्भित परिपत्रों के अनुसार, पुलिस को मीडिया के माध्यम से सूचनाऐं साझा करने के लिए बहुत अधिक सतर्कता व सावधानी बरतने की आवश्यकता है। सूचनाऐं साझा करते वक्त यह सुनिश्चित किया जाए कि सिर्फ सही, प्रासंगिक व प्रमाणिक व्यवसायिक जानकारी ही दी जा रही हो, जिससे न तो विवेचना के कार्य में कोई बाधा पड़ती हो, न ही आरोपी/फरियादी के निजता के अधिकरों का उल्लंघन होता हो और न ही किसी प्रकार के राष्ट्रहित व सामरिक महत्व के मुद्दों पर प्रतिकूल असर पड़ता हो।

मीडिया से संवाद के समय निम्नांकित दिशा—निर्देशों का विशेष ध्यान रखा जाए :—

HIGH COURT OF MADHYA PRADESH
W.P. No. 13057 of 2020
Arun Sharma Vs. State of M.P. and others

1. सिर्फ अपराध, कानून–व्यवस्था, पतारसी, बरामदगी एवं उपलब्धियों के संबंध में मीडिया को जानकारी अधिकृत अधिकारी द्वारा ही दी जाए।
2. मीडिया को सूचनाऐं देते समय पुलिस अधिकारी सिर्फ तथ्यों पर ही जानकारी साझा करे। अधपकी, अंदाजन व अपूर्ण सूचनाऐं विशेषकर विवेचना के बारे में नहीं दे। मीडिया को निम्नानुसार स्थितियों पर जानकारी दी जा सकती है :

   अ. पंजीयन के समय
   ब. आरोपियों की गिरफ्तारी के समय
   स. आरोप पत्र पेश करने के समय
   द. न्यायालय से फैसला आने के बाद

   प्रतिदिन निर्धारित समय पर नामांकित अधिकारी द्वारा प्रेस से रूबरू होना चाहिए ताकि अपराध, घटनाऐं, कानून–व्यवस्था विवेचना की प्रगति एवं पुलिस की उपलब्यिों के बारे में सही व आवश्यक जानकारी मीडिया को दी जा सके।

3. अपराध घटित होने के 48 घण्टे के अंदर कोई भी अनावश्यक जानकारी नहीं दें, सिर्फ घटना के संबंध में तथ्य–परख जानकारी दें।

4. अधिकांशतः देखा गया है कि टुकड़े–टुकड़े में विवेचना की प्रगति एवं सुरागों की जानकारी देने की प्रवृत्ति बढ़ती जा रही है। यह स्पष्ट रूप से निर्देशित किया जाता है कि ऐसा बिल्कुल नहीं हो अन्यथा अपराधी और संदिग्ध इसका अनुचित लाभ उठायेंगे।

5. शील–भंग एवं नाबालिग पीड़ितों के प्रकरणों में फरियादी की पहचान गुप्त रखें एवं माननीय न्यायालय द्वारा समय–समय पर जारी दिशा–निर्देशों का भी पालन सुनिश्चित करें। किसी भी स्थिति में उनकी पहचान मीडिया के समक्ष उजागर न करें।

6. पूर्व में जारी संदर्भित पत्रों के अनुरूप निजता के अधिकार और मानवाधिकार आरोपी व फरियादी दोनों को प्राप्त हैं, उनका उल्लंघन नही हो, इस बात का भी विशेष ध्यान रखा जाए।
   ए. गिरफ्तार व्यक्ति को मीडिया के समक्ष प्रस्तुत नहीं करें।
   बी. जिन प्रकरणों में शिनाख्ती परेड की आवश्यकता है, **उनमें गिरफ्तार व्यक्तियों के चेहरे प्रदर्शित नहीं करे।**

7. मीडिया ब्रीफिंग के दौरान अपना मत व निर्णयात्मक कथन से बचें।
8. **जब तक कि पुलिस ने कथन न ले लिए हों, तब तक पीड़ित व आरोपियों को मीडिया के समक्ष प्रस्तुत न करे।**

9. व्यवसायिक ट्रेडक्राफ्ट व आधुनिक तकनीकों एवं साधनों, जिनका उपयोग पुलिस पतारसी के लिए करती है, जाहिर नहीं करें अन्यथा आगामी अपराधों में अपराधी और अधिक सकर्तता से अपराध करें।

10. ऐसी कोई भी सूचना मीडिया को देने से बचे, जिससे राष्ट्रीय सुरक्षा प्रभावित होती हो।

11. अपराधियों की मॉडस–ऑपरेण्डी के बारे में कोई भी जानकारी मीडिया से साझा नहीं करें, **सिर्फ गिरफ्तार व्यक्तियों के आवश्यक व्यक्तिगत विवरण व उससे संबंधित जानकारी ही दें।**

12. विभिन्न न्यायालों द्वारा दिए गए दिशा–निर्देशों का किसी भी प्रकार से उल्लंघन नहीं हो इसका विशेष ध्यान रखा जाए।

13. जहां तक हो सके एक अधिकारी को जनसम्पर्क अधिकारी नामांकित किया जाए और उसके माध्यम से मीडिया से संवाद स्थापित करें ताकि घटनाओं के संबंध में सही एवं तथ्यात्मक जानकारी दी जा सके।

14. उस स्थिति में, जब विभाग को किसी भी घटना के बारे में गलत रिपोर्टिग की जानकारी मिलती है, तब विभाग तत्काल सही जानकारी मीडिया को दे ताकि समय रहते त्रुटि सुधार किया जा सके।

15. जिला पुलिस नियंत्रण कक्ष से जारी किये जाने वाले प्रेस नोट की दिनांकवार नस्ती सही ढंग से मेंटेन की जावे, प्रेस नोट जारी करने वाले अधिकारी का नाम, पदनाम स्पष्ट अंकित होना चाहिये।

16. महत्वपूर्ण प्रकरणों में जिलों से जो प्रेस नोट/जानकारी प्रदाय की जाती है उसकी प्रतिलिपि जनसंपक अधिकारी, पुलिस मुख्यालय, भोपाल को भी (फेक्स एवं ई–मेल द्वारा भी) पृष्ठांकित की जावे।

यदि किसी भी पुलिस अधिकारी या अन्य, जो कि इस कार्य के लिए अधिकृत नहीं हैं, के द्वारा इन निर्देशों का उल्लंघन किए जाने की जानकारी प्रकाश में आती है तो मीडिया में प्रकाशित समाचार की विषयवस्तु से संबंधित शाखा/इकाई के प्रभारी अतिरिक्त पुलिस महानिदेशक/पुलिस महानिरीक्षक, ऐसे पुलिस अधिकारी या अन्य के विरूद्ध कठोर अनुशासनात्मक कार्यवाही करवाया जाना सुनिश्चत करेंगे। यह भी सुनिश्चत करेंगे कि उपरोक्त निर्देशों का किसी भी प्रकार से उल्लंघन न हो।

(नन्दन दुबे)
पुलिस महानिदेशक,
मध्यप्रदेश, भोपाल.

HIGH COURT OF MADHYA PRADESH
W.P. No. 13057 of 2020
Arun Sharma Vs. State of M.P. and others

क्रमांक–विशा/7/मिस/एफ–133/2014–19 (6–A), दिनांक 2.01.2014

प्रतिलिपि :–

1. अतिरिक्त पुलिस महानिदेशक(गुप्तवार्ता)–उक्त निर्देशों के पालन हेतु समन्वय गुप्तवार्ता शाखा द्वारा हो।
2. समस्त अतिरिक्त पुलिस महानिदेशक, पुलिस मुख्यालय, भोपाल को पालन हेतु।
3. समस्त पुलिस महानिरीक्षक, पुलिस मुख्यालय, भोपाल को पालन हेतु।
4. समस्त उप पुलिस महानिरीक्षक, पुलिस मुख्यालय, भोपाल को पालन हेतु।
5. समस्त सहायक पुलिस महानिरीक्षक, पुलिस मुख्यालय, भोपाल को पालन हेतु।

(नन्दन दुबे)
पुलिस महानिदेशक,

32. From the plain reading of the above mentioned circular, it is clear that much thurst has been given to protect the *rights/privacy/dignity* and *reputation* of the suspect, and in clause 6 A, it is also mentioned that the suspect/accused should not be produced before the Media, but at the same time, in clause 8, liberty has been granted to produce the suspect as well as victim before the media after recording of police statement. Clause 6B of circular dated 2-1-2014, prohibits the display of photographs of an accused till the Test Identification Parade is conducted. The plain reading of this clause indicates, that this clause has been inserted by way of an exception, but there is no law which permits the display of photographs of suspects. The Counsel for the State could not justify the rationale behind the liberty of producing the accused or victim before the media, as well as display of photographs as mentioned in Clause 6B. By producing the victims and suspects before the media,

the police not only violates the fundamental rights of the suspect as enshrined under Article 21 of the Constitution of India but also encourages the media trials. It is true that a general public is entitled to know about the progress in an investigation, but producing the suspects or victims before the media has no foundation under any statutory provision of law including Cr.P.C. Further the circular dated 2-1-2014 itself is self-contradictory in nature. On one hand, it speaks about protecting the fundamental rights of an accused, but on the other hand, it gives liberty to the police men to violate the fundamental rights of the suspects/accused.

33. The submissions made by the *amicus curiae* that the police, instead of tapping their backs at the very initial stage of investigation, must concentrate on early disposal of trials so that the guilt of a suspect can be adjudicated by the Courts in accordance with law, is in the interest of justice. This Court in the case of **Jaipal Singh (Supra)** has observed as under :

> "....The Police Department has also issued various circulars including the circular dated 30-3-2019, by which it has been directed that a Gazetted Officer would monitor the execution and non-execution of summons/bailable warrants/warrants of arrest on daily basis. However, it is clear that the Gazetted officer also did not show any respect to the directions issued by the Police Headquarter. Thus, it is clear that the police witnesses and the Gazetted officer, were not only negligent in discharging their duties, but they donot have respect for their own senior police officers. It is for the Director General of Police as well as other Senior officers to find out as to whether this conduct

of the police witnesses is indicative of indiscipline of their part, or the circulars issued by the Police Head quarters from time to time are merely paper circulars issued with no intention to comply the same. Be that whatever it may be.

Speedy Trial is a fundamental right of the accused being an integral part of Article 21 of the Constitution of India.

* * * *

Thus, not only these two witnesses were playing with the life and liberty of an undertrial, but they had taken the Trial Court for granted. Even otherwise, according to Shri Manoj Kumar Singh, S.P., Bhind, that there was no reason for the witnesses for not appearing before the Trial Court for giving their evidence.

* * * *

The State cannot be allowed to become an instrumentality in securing bail for an accused. If the State is of the view that it is unable to keep its witnesses present before the Trial Court, without any lapses, then it must make a concessional statement before the Court, thereby conceding to the prayer of the accused for grant of bail. However, the State cannot be permitted to play the game of hide and seek. The State functionaries cannot be permitted to create a situation which may result in grant of bail to the accused. It is the primary duty of the State to maintain law and order in the society by bringing the breakers of law to the Court. Therefore, their officers cannot be permitted to stay away from the Court for no good reason, so that an accused can claim bail on the ground of delay in trial.

However, the breach of fundamental right of a citizen cannot be permitted and it can be compensated in terms of money.....

* * * *

So far the departmental action against the erring police officers is concerned, it is the outlook of the police department. This Court is of the view that if the police department is really interested in improving its working, then apart from issuing paper circulars from time to time, it must take effective steps in the matter. Since, it is the internal matter of the police department, therefore, this Court doesnot want to indulge itself in the internal affairs of the police department.

34. Furthermore, it is well established principle of law that unless and until a person is convicted, his innocence has to be presumed.

35. The Supreme Court in the case of **Mohd. Hussain Vs. State (Govt. of NCT of Delhi)** reported in **(2012) 2 SCC 584** has held as under :

> **23.** The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result, the accused charged with a serious offence must not be stripped of his valuable right of a fair and impartial trial. To do that, would be negation of concept of due process of law, regardless of the merits of the appeal. The Criminal Procedure Code provides that in all criminal prosecutions, the accused has a right to have the assistance of a counsel and the Criminal Procedure Code also requires the court in all criminal cases, where the accused is unable to engage counsel, to appoint a counsel for him at the expenses of the State. Howsoever guilty the appellant upon the inquiry might have been, he is until convicted, presumed to be innocent. It was the duty of the court, having these cases in charge, to see that he is denied no necessary incident of a fair trial.

36. The Supreme Court in the case of **Rajoo Vs. State of M.P.** reported in **(2012) 8 SCC 533** has held as under :

> **17.** We propose to briefly digress and advert to certain observations made, both in *Khatri* and *Suk Das*. In both cases, this Court carved out some exceptions in respect of grant of free legal aid to an accused person. It was observed that: (SCC p. 632, para 6)
>
> "*6*. … There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State."
>
> We have some reservations whether such exceptions can be carved out particularly keeping in mind the

> constitutional mandate and the universally accepted principle that a person is presumed innocent until proven guilty. If such exceptions are accepted, there may be a tendency to add some more, such as in cases of terrorism, thereby diluting the constitutional mandate and the fundamental right guaranteed under Article 21 of the Constitution. However, we need not say anything more on this subject since the issue is not before us.

37. Thus, merely because a person has been arrested or taken into custody by the police, is not sufficient to project him as a guilty person. On the contrary, various bail applications are being filed on the ground of delay in trial, because the police witnesses donot appear before the Trial Court for deposing in the matter. Thus, the police, instead of tapping its own back by disclosing the identity of the suspected persons in print, social or digital media, must concentrate on ensuring the timely appearance of the police witnesses before the Trial Court, so that the guilt of a person can be established. Further, the police must not leave the witnesses at the mercy of the anti-social elements, and must provide adequate security to them, so that they can depose before the Trial Court, without fear. Speedy trial is not only a fundamental right of an accused, but is also in the interest of justice dispensation system, because if the witnesses are examined at the earliest, then the accused party would also not get any opportunity to pressurize or win over the witnesses. Therefore, instead of harassing or humiliating a person by parading him in general public immediately after his arrest, or by publishing their

photographs in the news paper or on any digital platform, the police must ensure that not only the witnesses are given adequate security from the anti-social elements but they also appear before the Trial Court without any delay so that the allegations made against a person can be tested in accordance with law. The Supreme Court in the case **of NHRC Vs. State of Gujarat** reported in **(2009) 6 SCC** 767 has held as under :

> **6.** The importance of the witnesses in a criminal trial does not need any reiteration.....
> **7.** It is an established fact that witnesses form the key ingredient in a criminal trial and it is the testimonies of these very witnesses, which establish the guilt of the accused. It is, therefore, imperative that for justice to be done, the protection of witnesses and victims becomes essential, as it is the reliance on their testimony and complaints that the actual perpetrators of heinous crimes during the communal violence can be brought to book. Vide an order dated 8-8-2003 in *NHRC* v. *State of Gujarat*, this Court regretted that "no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses".
> * * * *
> **37.** Since the protection of a witness is of paramount importance it is imperative that if and when any witness seeks protection so that he or she can depose freely in court, the same has to be provided.....

38. The Supreme Court in the case of **Mahender Chawla Vs. Union of India** reported in ***(2019) 14 SCC 615*** has held as under :

> **5.** In *Swaran Singh* v. *State of Punjab*, this Court speaking through Wadhwa, J. expressed view on conditions of witnesses by stating that: (SCC pp. 678-79, para 36)
> *36*. The witnesses are harassed a lot. They come from distant places and see the case is adjourned.

They have to attend the court many times on their own. It has become routine that case is adjourned till the witness is tired and will stop coming to court. In this process lawyers also play an important role. Sometimes witness is threatened, maimed, or even bribed. There is no protection to the witnesses. By adjourning the case the court also becomes a party to such miscarriage of justice. The witness is not given respect by the court. They are pulled out of the court room by the peon. After waiting for the whole day he sees the matter being adjourned. There is no proper place for him to sit and drink a glass of water. When he appears, he is subjected to prolong stretched examinations and cross-examinations. For these reasons persons avoid becoming a witness and because of this administration of justice is hampered. The witnesses are not paid money within time. The High Courts must be vigilant in these matters and should avoid harassment in these matters by subordinate staff. The witnesses should be paid immediately irrespective of the fact whether he examines or the matter is adjourned. The time has come now that all courts should be linked with each other through computer. The Bar Council of India has to play important role in this process to put the criminal justice system on track. Though the trial Judge is aware that witness is telling lie still he is not ready to file complaint against such witness because he is required to sign the same. There is need to amend Section 340(3)(*b*) CrPC.

6. It hardly needs to be emphasised that one of the main reasons for witnesses to turn hostile is that they are not accorded appropriate protection by the State. It is a harsh reality, particularly, in those cases where the accused persons/criminals are tried for heinous offences, or where the accused persons are influential persons or in a dominating position that they make attempts to terrorise or intimidate the witnesses because of which these witnesses either avoid coming to courts or refrain from deposing truthfully. This unfortunate situation prevails because of the reason that the State has not undertaken any protective measure to ensure the safety of these witnesses,

commonly known as "witness protection".

* * * *

8.....43. In *State* v. *Sanjeev Nanda*, the Court felt constrained in reiterating the growing disturbing trend: (SCC pp. 486-87, paras 99-101)

> '*99*. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law, thereby eroding people's faith in the system.
>
> *100*. This Court in *State of U.P.* v. *Ramesh Prasad Misra* held that it is equally settled law that the evidence of a hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In *K. Anbazhagan* v. *Supt. of Police*, this Court held that if a court finds that in the process the credit of the witness has not been completely shaken, he may after reading and considering the evidence of the witness as a whole, with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court [*Sanjeev Nanda* v. *State*] and they found the accused guilty.
>
> *101*. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in *Manu Sharma* v. *State (NCT of Delhi)* and in *Zahira Habibullah Sheikh* v. *State of Gujara* had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution

witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.'

44. On the analysis of various cases, the following reasons can be discerned which make witnesses retracting their statements before the court and turning hostile:

(*i*) Threat/Intimidation.

(*ii*) Inducement by various means.

(*iii*) Use of muscle and money power by the accused.

(*iv*) Use of stock witnesses.

(*v*) Protracted trials.

(*vi*) Hassles faced by the witnesses during investigation and trial.

(*vii*) Non-existence of any clear-cut legislation to check hostility of witness.

45. Threat and intimidation has been one of the major causes for the hostility of witnesses. Bentham said: "*witnesses are the eyes and ears of justice*". When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal-justice delivery system. It is for this reason there has been a lot of discussion on witness protection and from various quarters demand is made for the State to play a definite role in coming out with witness protection programme, at least in sensitive cases involving those in power, who have political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. A stern and emphatic message to this effect was given in *Zahira Habibullah Sheikh (5)* v. *State of*

Gujarat as well.

* * * *

26.....Need and justification for the scheme:

Jeremy Bentham has said that "*Witnesses are the eyes and ears of justice*". In cases involving influential people, witnesses turn hostile because of threat to life and property. Witnesses find that there is no legal obligation by the State for extending any security.

The Hon'ble Supreme Court of India also held in *State of Gujarat* v. *Anirudhsing* that: "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence." Malimath Committee on Reforms of Criminal Justice System, 2003 said in its report that 'By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the court to discover the truth'. In *Zahira Habibulla H. Sheikh* v. *State of Gujarat* while defining fair trial Hon'ble Supreme Court of India observed 'If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial'.....

39. The Supreme Court after accepting the **Witness Protection Scheme** as proposed by the Union of India, has issued the following directions :

36. We, accordingly, direct that:

36.1. This Court has given its imprimatur to the Scheme prepared by Respondent 1 which is approved hereby. It comes into effect forthwith.

36.2. The Union of India as well as the States and the Union Territories shall enforce the Witness Protection Scheme, 2018 in letter and spirit.

36.3. It shall be the "law" under Articles 141/142 of the Constitution, till the enactment of suitable parliamentary and/or State legislations on the subject.

36.4. In line with the aforesaid provisions

> contained in the Scheme, in all the district courts in India, Vulnerable Witness Deposition Complexes shall be set up by the States and Union Territories. This should be achieved within a period of one year i.e. by the end of the year 2019. The Central Government should also support this endeavour of the States/Union Territories by helping them financially and otherwise.

40. Thus, it is clear that protection of witnesses is the utmost essential duty of the Police so that the witnesses can depose against the wrongdoer without any fear or pressure. However, nothing has been brought on record to show that any direction in consonance with the Witness Protection Scheme has been issued. Further, there is nothing on record to suggest that whether the State of Madhya Pradesh has implicated the Witness Protection Scheme or not?

41. Thus, disclosure of the identity of the suspects in the news papers or on the digital platforms, or parading the suspects in the general public, even prior to the adjudication of the allegations by the Court of law is certainly infringement of fundamental rights of a suspect.

(I) Accordingly, in exercise of suo motu power under Article 226 of the Constitution of India, clause 6B, 8 and 11 of the circular dated 2-1-2014 issued by the Director General of Police, State of Madhya Pradesh, so far as it relates to production of victims and suspects before the media, as well as disclosure of personal informations of the suspects to the media or display of

their photographs in newspapers or on any digital platform are hereby quashed being violative of Article 21 of the Constitution of India. Further, parading of suspects in general public is also held to be violative of Article 21 of the Constitution of India. Accordingly, the Director General of Police, State of Madhya Pradesh, is directed to immediately issue necessary instructions to the Superintendent of Police of all the Districts that there shall not be any disclosure of identity of the suspects and victims under any condition and further there shall not be any parading of suspects in general public under any circumstances. The publication of photographs of suspects whether with covered or uncovered faces shall also not be done under any circumstances. Any information to the media with regard to progress in the investigation shall be shared only after the same is duly approved by the Superintendent of Police of the concerning District. For any deviation, the Superintendent of Police of the concerning District shall be personally responsible, apart from other erring police officers.

(II) Further, the State of Madhya Pradesh, is directed to implement the *Witness Protection Scheme* in its letter and spirit.

(III) Further, the Director General of Police, is directed to issue necessary instructions with regard to providing protection to the witnesses as well as to ensure prompt appearance of witnesses

including the police witnesses before the Trial Court.

Let a copy of the circulars be filed before the Principal Registrar of this Court not beyond the period of 15 days from today.

42. The next question for consideration is that whether the detention of the petitioner, without there being any formal arrest is violative of directions issued by the Supreme Court in the case of **D.K. Basu (1997) (Supra)** or not?

43. In the case of **D.K. Basu (1997) (Supra)** it has been held by the Supreme Court as under :

> **35.** We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:
>
> (1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
>
> (2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.
>
> (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his

welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

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

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

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

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

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

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

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

> (11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
>
> **36.** Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

44. It is the case of the respondents no. 1 and 2 themselves, that the petitioner was not formally arrested (As it is mentioned in punishment order dated 14-10-2020 passed by Superintendent of Police, Gwalior) and he was wrongly taken into custody as some other person with similar name and details was wanted in a criminal case. If the petitioner was taken into custody under a mistaken identity, then there was no hurdle for the police to arrest him formally after following the requirements as directed by the Supreme Court in the case of **D.K.Basu (1997) (Supra).** Thus, in absence of any formal arrest, there was no occasion for the police, to publish the uncovered face of the petitioner in the news paper or on social media, thereby projecting him as a criminal. Thus, it is clear that for no reasons, the petitioner was not only kept in illegal detention, but his reputation was tarnished and his privacy and dignity was violated.

45. **Thus, in the light of direction issued in para 36 of**

aforementioned judgment, a show cause notice is issued to the respondent no.3 and 5, to explain as to why they should not be punished for having committed Contempt of Court. Office is directed to register a case separately for appearance of respondent no. 3 and 5 on 20th of November 2020. It shall be the duty of the Superintendent of Police, Gwalior to serve the notice on the respondent no.3 and 5.

Whether compensation can be awarded for infringement of Fundamental Rights

46. The above issue is no more *res integra.* The Supreme Court in the case of **Anita Thakur v. State of J&K,** reported in **(2016) 15 SCC 525** has held as under :

> **18*.** When we examine the present matter in the aforesaid conspectus, we find that initially it was the petitioners/protestors who took the law into their hands by turning their peaceful agitation into a violent one and in the process becoming unruly and pelting stones at the police. On the other hand, even the police personnel continued the use of force beyond limits after they had controlled the mob. In the process, they continued their lathi-charge. They continued to beat up all the three petitioners even after overpowering them. They had virtually apprehended these petitioners making them immobile. However, their attack on these petitioners continued even thereafter when it was not at all needed. As far as injuries suffered by these petitioners are concerned, such a situation could clearly be avoided. It is apparent that to that extent, the respondents misused their power. To that extent, fundamental right of the petitioners, due to police excess, has been violated. In such circumstances, in exercise of its power under Article 32 of the Constitution, this Court can award

> compensation to the petitioners. (See *Saheli* v. *Commr. of Police Joginder Kaur* v. *Punjab State*, *State of Rajasthan* v. *Vidhyawati* and *Nilabati Behera* v. *State of Orissa*.) The ratio of these precedents can be explained thus: First, it is clear that a violation of fundamental rights due to police misconduct can give rise to a liability under public law, apart from criminal and tort law. Secondly, that pecuniary compensation can be awarded for such a violation of fundamental rights. Thirdly, it is the State that is held liable and, therefore, the compensation is borne by the State and not the individual police officers found guilty of misconduct. Fourthly, this Court has held that the standard of proof required for proving police misconduct such as brutality, torture and custodial violence and for holding the State accountable for the same, is high. It is only for patent and incontrovertible violation of fundamental rights that such remedy can be made available. Fifthly, the doctrine of sovereign immunity does not apply to cases of fundamental rights violation and hence, cannot be used as a defence in public law.

47. In case of illegal detention, this Court can award compensation to the sufferer.

48. The Supreme Court in the case of **Bhim Singh (Supra)** has held as under :

> 2.....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.

49. The Supreme Court in the case of **Sube Singh (Supra)** has held as under :

> **38.** It is thus now well settled that the award of compensation against the State is an appropriate and effective remedy for redress of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of the Code of Criminal Procedure.

50. Thus, it is clear that violation of Fundamental Right of a person due to police misconduct, would not only give rise to a liability under Criminal, Tort and Public Law but pecuniary compensation can also be awarded.

Incident of 25-7-2020

51. It is submitted by Shri Purushendra Kaurav, that his tentative observation is that at District Level, the matter has been handled in a most casual manner and therefore, he may be granted some time to reconsider the steps taken against the respondents no. 3 to 5.

52. As Shri Kaurav, has prayed for some time to reconsider the matter with regard to the incident of 25-7-2020, therefore, a weeks time is granted to reconsider the decision as well as to argue on the individual conduct of the respondents no. 3 to 5. Therefore, the submissions made by Shri D.P. Singh, Counsel for the respondents no.4 and 5 with regard to the incident which took place on 25-7-2020

shall be considered on the next date of hearing**.** Therefore, this case is adjourned for further hearing on the question of incident dated 25-7-2020.

53. The Advocate General is also directed to address on the question as to whether the respondent no. 3 could have taken cognizance of complaint made by the land lady on 25-7-2020 or not and whether the conduct of the respondents no. 3 to 5 on 25-7-2020 in forcibly evicting the petitioner from the rented premises, also amounts to criminal act or not?

54. The question of award of compensation shall also be considered after deciding the question of involvement of the respondents no. 3 to 5 in the incident dated 25-7-2020. The defence of the respondent no. 4 and 5 shall also be considered on the next date of hearing.

55. This Court would like to express its deep gratitute to the valuable assistance rendered by Shri Naval Kumar Gupta, Senior Advocate and Shri Prashant Sharma, Advocate who graciously accepted the request of the Court to assist in the matter.

55. List this case on **9-11-2020.** The Superintendent of Police, Gwalior is also directed to appear through video conferencing with the entire record for the assistance of the Court.

(G.S. Ahluwalia)
Judge