"A CRITICAL STUDY ON POLICE CUSTODIAL TORTURE AND VIOLATION OF HUMAN RIGHT"

DISSERTATION

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UNDER SUPERVISION OF:

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LIST OF ABBREVIATION

A.I.R.	:	All India Reporter
SCC	:	Supreme court cases
H.C.C	:	High court cases
HC.	:	High court
SC	:	Supreme court
CAPT.	:	Captain
e.g.	:	Example
I.P.C.	:	Indian Penal Code
Prof.	:	Professor
S.	:	Section
U.S.A.	:	United States of America
V.	:	Versus
i.e,	:	That is
ART	:	Article

LIST OF CASES

1. Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260
2. Dr. Justice V.S. Malimath
3. ThuliaKali v. State of Tamil Nadu, 1972 Cri. L.J. 12963
4. G.B. P. v. State of Maharashtra A.I.R. 1979 S.c. 135.
5. Hasib v. The State of Bihar A.I.R. 1972 S.c. 283.

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INTRODUCTION

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1. INTRODUCTION

1.1 A CRITICAL STUDY ON POLICE CUSTODIAL TORTURE AND VIOLATION OF HUMAN RIGHT

human rights are the basic rights of every individual against the state or any other public authority as a member of the human family irrespective of any other consideration. Thus every individual of the society has the inherent right to be treated with dignity in all situations including arrest and keeping in custody by the police. Rights of an individual in police custody are protected basically by the Indian constitution and by various other laws like code of criminal procedure, evidence act, Indian penal code and protection of human rights act. these right are also recognized by various international documents like universal declaration human rights, international covenant on civil and political rights, convention against torture and other cruel, inhuman or degrading treatment or punishment and body of principles for the protection of all persons under any form of detention or imprisonment. In spite of these international and national legal standards for the protection of rights of persons in police custody, human right violations in police custody are endemic in India and are tarnishing the image of India abroad. Since the police play a vital role in a democracy not only with respect to maintenance of law and order but also in dealing with the rapid increase of crime rates in the criminal justice system, policy of police must strive to attain objectives like fairness, consistency, tolerance of minority views and other values which are inherent in a society. Being the visible symbol of state authority, police should see that their actions are not affecting the liberty and freedom of individuals and not infringing the basic human rights values of suspects in custody, while fulfilling the avowed objectives of prevention and investigation of crimes.[1]

Respect for human deference while protecting the life and liberty of an individual is the cardinal principle of the constitution of India and international covenant on human rights. to be in

[1]Prof. n.v Paranjape “criminology, penology &victimology”

conformity with the basic laws, the substantive and procedural laws in india also lay stress on observance of human rights in the administration of criminal justice. police being the primary agency of criminal justice system is bound to follow the mandate of the law and protect the human rights of accused. But there is the deep concern at the growing incidents of custodial crimes occurring in different parts of our country. Complaints of abuse of power, and torture of suspects in custody by the police and other law enforcing agencies having power to detain a person for interrogation in connection with investigation of an offence are, on the rise. of late, such complaints have assumed alarming dimensions, projecting the incidents of torture, assault, injury, extortion, sexual exploitation death in custody. Compared with other crimes, custodial crimes are particularly heinous and revolting as they reflect betrayed of custodial trust by a public servant against the defenceless citizen. Custodial crimes violate law, human dignity and human rights.

Despite constitution and statutory provisions safeguarding the life and liberty of an individual, the growing incidents of custodial torture and death have become a disturbing factor in the society. The increasing number of custodial torture cases, sometimes even culminating in the death of accused, is the order of the day. Every such reports are being published in newspapers of being shown on television and other electronic media. Generally, the victims of custodial crimes, torture, injury or death belong to weaker sections of the society . the poor, the downtrodden and the ignorant with little, or no political or financial power, are unable to protect their interests. The affluent members of the society are generally not subjected to torture as the police is afraid of their resources as such resourceful persons immediately approach higher authorities and courts to regain their freedom. Members of the weaker or poorer sections of society . are arrested informally and kept in police custody for days together without any entry of such arrests in the police records. During the informal detention they are subjected to torture, which at times results in death. In the event of death in custody, the body of the deceased is disposed of stealthily or thrown to a public place making out a case of such suicide or accident. Records are manipulated to shield the police personnel.

The relatives of friends of the victim are unable to seek protection of law on account of their poverty, ignorance and illiteracy. But even if some voluntary organizations take up their case or public interest litigation. No effective or speedy remedy is available to them, as a result of which erring public officer go scot-free. This situation gives rise to a belief that the laws protection is

meant for the rich and not for the poor. If the incidents of custodial crimes are not controlled or eliminated, the constitution, the law, and the state would have no meaning to the people which may ultimately lead to anarchy de-stabilising the society.

The custodial violence is a generic term and it include all and every type of torture, 'third degree' harassment, brutality, use of force not warranted by law etc. generally speaking, custodial violence by police may include illegal detention, arrest which is wrongful or illegal or on insufficient grounds, using third degree methods on the suspects, humiliating them with filthy language and indecent remark, mental pressures like threat to implicate the family or friend in a case, not allowing to sleep, eat or rest, extorting confessions under pressure, unreasonable and unnecessary police custody remands, planting of evidence either on the person of the accused to show as 'discovered at the instance of the accused', padding up of the available evidence, misuse of the power regarding handcuffing, misuse of discretion regarding powers to release on bail, not allowing him to get in touch with his counsel or his family members etc. however, since the torture or third degree is the most common and conspicuous from of research would like to go in detail about the atrocities committed by them.

Torture in layman language means "cruelty", "atrocities" and "hurt" and deliberately causing great pain, physical or mental in order to punish or to get information or to forcibly make one confess to something. Legal glossary defines 'torture' as "the infliction of excruciating pain". 'Torture' generally supports intense suffering, physically, mentally and psychologically aimed at forcing someone to do or say something against his or her will. It means breaking down under severe pain and extreme psychological pressure. For obvious reasons, torture is not torture for those who practice it. It goes under the names of 'sustained interrogation, questioning or examining', whatever the name, brutalization is the result always. Torture Commission of India also attempted to define 'torture' as 'pain by which guilt is punished or confession extorted'.

Torture is the practice or act of deliberately inflicting severe physical pain and possibly injury on a person, though psychological and an animal torture also exist. Torture has been carried out or sanctioned by individuals, groups and states throughout history from ancient times to modern day, and forms of torture can vary greatly in duration from only a few minutes to several days or even longer. Reasons for torture can include punishment, revenge, political re-education, deterrence, interrogation or coercion of the victim or a third party, or simply the sadistic gratification of those

carrying out or observing the torture. The torturer may or may not intend to kill or injure the victim, but sometimes torture is deliberately fatal and can accompany forms of murder or capital punishment. The aim may also be to inflict pain but without causing fatal injury, or sometimes any injury at all. In other cases, the torturer may be indifferent to the condition of the victim.

It is considered to be a violation of human rights, and is declared to be unacceptable by Article 5 of the Universal Declaration of Human Rights. Signatories of the Third Geneva Convention and Fourth Geneva Convention officially agree not to torture prisoners in armed conflicts. Torture is also prohibited by the United Nations Convention against Torture, which has been ratified by 147 countries National and international legal prohibitions on torture derive from a consensus that torture and similar ill-treatment are immoral, as well as impractical. Despite these international conventions, organizations that monitor abuses of human rights (e.g. Amnesty International, the International Rehabilitation Council for Torture Victims) report widespread use condoned by states in many regions of the world. Amnesty International estimates that at least 81 world governments currently practice torture, some of them openly. It means an act of inflicting or excruciating pain especially as punishment or coercion or any method of inflicting such pain, which law enforcing authority or any persons or group of

persons inflicts upon a criminal or suspect or arrestee for extracting true information or for coercion to a person in order to make confession. When it is an advance degree, it is sadistic in nature, inhuman, unreasoning, irrational, uncivil and beastlike or beastly, hence brutal. It's not merely physical. There may be cases of mental torture calculated to create fright and submission to the demands or commands, when such threats proceed from a person in authority like police officer, the mental torture cause by it is even graver. The term 'torture' has not been defined in the Constitution of India or other Penal laws. Torture of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering. The word torture today has become synonymous with the darker side of human civilization. It will not be incorrect to state that torture is an integral part of the police working. It is the best method for the police to extort confession and to the authorities to silent the voice of discontent. Therefore both police as well as prison authorities practice it to fulfil their own objectives.

Torture is inflicted for one of the two purposes

➢ As a means of eliciting evidence from a witness or from an accused person.

➢ As a part of punishment.

The prohibition of torture (and other cruel, inhuman or degrading treatment or punishment) has been advocated ever since the adoption of Universal Declaration of Human Rights, 1948 and Geneva Convention, 1949. No violation of any one of the human right 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" 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, civilization takes a step backward – flag of humanity must on each such occasion fly half – mast.In all custodial crimes what is a real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock- up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is beyond the purview of law.

1.2 Objectives of the Study

The study is intended to investigate the causes of human rights violations in police custody and abuse of their authority by using third degree and inhuman methods on persons in their custody. Further it concentrates on the ways by which the police personnel can be made duty-bound and thereby make them withdraw themselves from committing custodial torture and make them aware of the need for protecting the human rights values.

1.3 Research Methodology

Sampling Frame:- Examination of relevant cases of custodial violence including custodial deaths and Custodial rapes.

* Study nature and extent of custodial crimes in police custody;

* Analyze causes of custodial crimes in police custody ;

* custodial torture is used as a tool to extract confession in police custody

* Tortoure is main cause for custodial crimes in police custody

* Torture serves the purpose to deterrent on other criminals in society;

* victims of custodial crimes belong to poor and marginalized sections of society;

* societal acceptability custodial violence as a means to solving crime problem;

* impunity as legal instruments to shield for guilty police officials responsible for custodial crimes.

The secondary data is obtained froma) Decisions of Supreme Court and various High Courts.

b) Reports of Amnesty International.

c) Reports of National Human Rights Commission.

d) Reports of various civil liberties groups and human rights organizations.

e) Newspapers and periodicals.

£) Data collected from Police Academy, Thrissur and Police Training College, Thiruvananthapuram.

Hypothesis

Hypothesis lays on important and dominating role in any social research. Following hypothesis are formulated:

- Torture in police custody is a violation of human rights, and human dignity.
- Physically and mental torture is a main problem in the country.

- To know the truth used a third- degree torture by the police.
- Result custodial torture and death is a major issue in present days.
- The United Nations Convention against Torture (UNCAT) is the only legally binding convention at the Universal level concerned review of united nation aims to protect a human right.

1.4 Literature Review

Shourie (1980),

in his study, reveals that poverty has relationship with vulnerability to victimization of custodial violence. In majority of the cases investigation by the writer, victims of human rights violations were arrested in minor offences, such as theft.it has been further revealed that in majority of the cases, victims have been inflicted with severe physical injuries. The study also highlights, a casual approach violence. Even political or social organizations lack required sensitivity to these kinds of incidents.

Mitchell and McCosmick (1988),

demonstrate that human rights abuses by the governments are commonplace. The state authorities no doubt enlist the support of the police and the armies in tackling cries situations or for various kinds of development projects. But these forces become convenient tools in the hands of their political masters in committing all kinds of excesses like illegal arrests, torture and in extreme cases even elimination. This aberration cuts across all kinds of national, ideological, economic and political identities. Writers support their argument with illustrations of Iraq in Middle East, Guatemala in central America, Camroons and South Africa in Africa, Burma (now Mayanmar) in Asia, and Northern Ireland in Western Europe. The however, contend that the degree of these abuses varies from nation to nation. They pointed out that the most unstable countries would be those where social and political unrest prevail due to economic disparities and these tensions would encourage the growth of repressive regimes in such places. Their survey indicates that countries with low per capita income are more prone to incidents of torture. Writers also find that countries those are more invoved economically with advanced capitalist countries, have less respect for human rights. Writers further noted that although arbitrary imprisonment does compromise with

the self- respect of any individual, yet the cases of systematic torture must bedealt with even priority.

Noorani (1989),

gives an exposition that the image of our country stands grievously compromised by complaints of police torture and in some cases even custodial deaths. On the basis of documented report published by Amnesty International, he has emphasised that 'disappearances' are not frequent reported in India. He shows concern that the few cases that have occurred do not set a trend. Taking a clue from documents of international bodies, he highlights the importance of keeping detailed records of all arrested persons and prosecution against the police or other members of security forces who are involved in or are responsible for 'disappearance' under ordinary proceedings of criminal law.

Sahani (1989),

in her study on under-trial women prisoners in custody, finds that those prisoners have been victims of human rights violations in respect to their arrest, detention and the treatment given during detention in the custody of police. No gender related considerations have been observed on the part of police during interrogation, even if the under-trial is pregnant. The study also finds psychological problems amongst the victims of human rights violations, due to insults meted out on them frequently and they have been treated unfairly at par with serious offenders. They have also been victims of exploitation. The victims feel that they have not been given adequate opportunity to be heard. The writer further observed that poor women are more prone to victimization.

Roht-Arriaza (1990),

pleads for an international law whereby states can be made accountable in cases relating to disappearances and killings by death squads and are obliged to investigate incidents of such serious human rights violations and thus punish the perpetrators. Such a law should bring under its ambit the acts of omission and commission of previous government too. He highlights that legal and policy aspects are crucial to the issue of human rights violations. Though there are numerous international instruments based on the conventional law, the record of respect of human rights, on

the part of governments world over, is not very encouraging. The writer finds it inspiring that customary international law recognises the need for action against torture and arbitrary detention. For him it was heartening to see growing intolerance among the global communities against governmental abuses. In face of worldwide criticism of such misdeeds committed by states, the government tried to cloak their questionable acts behind the veneer of disappearances and killings by death squads.

In his opinion, the states must evolve systems which come down hard on such human rights violations and redress such grievances by restructuring their armed and police forces and by taking strict action against the wrong doers by straight away dismissing them or withdrawing their pension rights. Apart from this, financial reliefs can also be extended to the victims, as a part of post-adjudicatory redress. Finally, the writer argues for resting the responsibility of enforcing international human rights laws on the domestic institutions. Such steps, he observes, will go a long way in allaying the fear in the minds of the victims and their families.

CHAPTER-2

CUSTODIAL TORTURE: HISTORICAL PERSPECTIVES

CHAPTER-2

2. CUSTODIAL TORTURE: HISTORICAL PERSPECTIVES

2.1 DEFINITIONS OF TORTURE

Torture, according to the 1984 United Nations Convention against torture (an advisory measure of the un general assembly) is defined as, any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions. --**UN Convention against Torture.**

This definition was restricted to apply only to nations and to government-sponsored torture and clearly limits the torture to that perpetrated, directly or indirectly, by those acting in an official capacity.

It appears to exclude:

1. Torture perpetrated by gangs, hate groups, rebels or terrorists who ignore national or international mandates;

2. Random torture during war; and

3. Punishment allowed by national laws, even if the punishment uses techniques similar to those used by torturers such as mutilation or whipping when practiced as lawful punishment. Some professionals in the torture rehabilitation field believe that this definition is too restrictive and that the definition of politically motivated torture should be broadened to include all acts of organized torture.

In 1986, the *World Health Organization* working group introduced the concept of organized torture, which was defined as:

"The inter-human infliction of significant, avoidable pain and suffering by an organized group according to a declared or implied strategy and/or system of ideas and attitudes". It comprises any violent action that is unacceptable by general human standards, and relates to the victims' feelings. Organized torture includes "torture, cruel inhuman or degrading treatment or punishment" as in Article 5 of the United Nations Universal Declaration of Human Rights (1984). Imprisonment without trial, mock executions, hostage-taking, or any other form of violent deprivation of liberty, also falls under the heading of organized torture."

2.1.1 Tokyo Declaration, 1975

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". Custodial torture, often known as extra-judicial executions has been on a rise in India especially between 2002 and 2007. This definition includes torture as part of domestic torture or ritualistic abuse, as well as in criminal activities. Since 1973 Amnesty International has adopted the simplest, broadest definition of torture:

"Torture is the systematic and deliberate infliction of acute pain by one person on another, or on a third person, in order to accomplish the purpose of the former against the will of the latter."

2.1.2 According to Major Richard

Major Richard clarified that torture as First Degree refers to legal arrest and custody. Second degree refers to illegal arrest and custody. Third degree refers to the physical force used on a suspect by the police to force him to tell the truth. Our criminal law has progressed beyond doubt and has laid down the fundamental principles of Criminal Jurisprudence. These principles though not mentioned in the statutes or the Constitution. The following Principle have been considered as fundamental to our criminal Jurisprudence:-

A- Accused to be presumed innocent until proved guilty,
B- The burden of Proof on the prosecution to prove the guilty,

C- The prosecution to prove his guilty beyond all reasonable doubt,

D- If any doubt regarding the guilty then the benefit of doubt must go to the accused.

E- The principle of "Let ninety criminal go unpunished, but let no one innocent person suffer".

In spite of the glorification of these fundamental principles by various Human Rights Organizations, we can see that many types of Third- Degree methods are still in vogue including the following-

i. Beating
ii. Burning of parts of human body with help of cigarette.
iii. Denying Food, Water and sleep.
iv. Forcing the arrest person to drink urine.
v. Putting ice slabs on naked part of human body.
vi. Suspending the person in head down position by his legs.
vii. Providing electric shock treatment.
viii. Providing hot water bottle treatment.
ix. Forced extraction of teeth and nail.
x. Using of rack as an instrument to stretch the limbs and body.
xi. A thumbscrew, a metal studded vice in which suspect's thumbs are compressed.
xii. Putting rates and cockroaches inside the trouser of the person with his hand and legs tied down.
xiii. Inserting stick in public zone.
xiv. Plucking hair and moustache.
xv. Making the person crouch.
xvi. Putting psychological impact on the person.

2.2 CUSTODIAL TORTURE: MEANING

The term custodial torture has not been defined under any law. It is a combination of two word custody and torture. The word 'custody' implies guardianship and protective care. Even when applied to indicate arrest or imprisonment, it does not carry any evil symptoms during custody. In a law dictionarythe word 'custody'; has been defined as charge and with regard to a person in

imprisonment: judicial or penal safekeeping. As Per Chamber Dictionary, the condition of being held by the police, arrest or imprisonment is called ‘custody’. As Per Legal Glossary Dictionary, custody is imprisonment, the detaining of a person by virtue of lawful Power or authority.

Section 167 of the Code of Criminal Procedure speak about two type of custody i.e. police custody and judicial custody. As per section 167(1) of Cr. P.C., “the magistrate to whom an accused person is forwarded under this section may whether he has or not has jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as he may think fit. Provided that the magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days if he is satisfied that adequate ground exist for doing so. So as per section 167 (1) of Cr. Pc. 'police custody' can be granted for a maximum period of fifteen days only' Police custody basically means police remand for the purpose of interrogation. In law actually a police officer has two occasion to keep a person in its custody firstly, from the period when he arrest a person till he produce the said person in the court i.e. first 24 hours of the arrest of accuse. Secondly, when police gets, remand from court after producing the accuse in the court which can be extend up to a maximum period fifteen days, thereafter, a person is sent in judicial custody which in general terms means jail or prison, where an accuse remain in custody till he gets bail or if convicted and sentenced to jail till the completion of sentence. As per law, ‘custody’ of a person begins when the police arrest him.

Other type of custody as mentioned earlier is ‘judicial custody’ which means sending a person in jail or prison. As per section 3 (1) of ‘The Prison Act, 1894’, ‘Prison’ means any jail or placeused permanently or temporarily under the general or special order of a State Government for the detention of prisoners and include all land and building appurtenant thereto, but does not include:-

(a) Any place for the confinement of prisoners who are exclusively in the custody of police; or

(b) Any place specially appointed by State Government under section 541 of the old Criminal Procedure Code, 1882,

(c) Any place, which has been declared by the State Government by general or special order to be subsidiary jail.

The term ‘torture’ is the state or quality of being violent, excessive unrestraint or unjustified force, outrage perforate injury. ‘Torture’ in its literal sense has been defined as the use of force by one person over another so as to cause injury to him. The injury may be physical, mental or otherwise. The simple definition of torture is behaviour designed to inflict injury on a person or damage to property. Custodial torture is a term, which is used for describing torture committed against a person by a police authority. Thus, custodial torture can be defined as “an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered.” According to Law Commission of India, crime by a public servant against the arrested or detained person who is in custody amounts to custodial torture. According to Dr. S. Subramaniam, “Any use of force threat psychological pressure is termed as custodial torture. According to Justice B.P. Jeevan Reddy, “Custodial torture includes torture, death, rape and excessive beating in police custody”.

Although, overcrowding, malnutrition, unhygienic conditions and lack of medical care are some of the factors of death in police and judicial custody, but custodial torture remains the common cause of deaths in prisons and lock-ups. The custodial torture is a generic term and includes all and every type of torture, third degree, harassment, brutality, use of force not warranted by law, etc. custodial torture include illegal detention, arrest which is wrongful or on illegal or on insufficient grounds using third degree method, on the suspects, humiliating them, using filthy language, not allowing them to sleep, extorting confession under pressure, padding up of additional evidence, misuse of the power regarding handcuffing not allowing to meet counsel or family member to accuse, denial of food etc. However since the torture or third degree in the most common and prominent form of custodial torture by the police. The police officials commit an act of torture upon the persons in their custody under the guise of investigation and interrogation. The heinousness of this crime is that it is committed upon the citizens by the very person who is considered to be the guardian of the citizens. It is committed under the shield of uniform and authority within the four walls of Police Station or lock up, the victim being totally helpless in these circumstances. The protection of an individual from torture and abuse of power by police and other law enforcing officers is a matter of deep concern in a free society.

The chances of torture committed by police on persons in its custody are much greater than any other form of torture. The basic reason behind it is that the victims of such torture are unable to

protest against it. The police officers use their official position to manipulate evidences against themselves. Death in custody is generally not shown on the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from jail. Any complaint against torture is not given attention because of ties of brotherhood. No direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock- up where generally torture or injury is caused is away from public gaze and the witnesses are either policemen or co-prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police.

However, in spite of the Constitutional and Statutory provisions contained in the Criminal Procedure Code and the Indian Penal Code aimed at safeguarding personal liberty and life of a citizen, the growing incidence of torture and deaths in police custody has been disturbing. Experience shows that the worst violations of human rights take place during the course of investigation when the police, with a view to securing evidence or confessions, often resort to third-degree methods including torture and techniques of arrests by either not recording them or describing the deprivation of liberty merely as "prolonged interrogations". A reading of the morning newspapers carrying reports of dehumanizing torture, assault, rape and death in police custody or other governmental agencies almost every day 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. As a result the society rightly feels perturbed. The 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 the law and no civilized nation can permit that to happen. Custodial torture may be both physical and or mental. It may also consist of gross negligence or deliberate inaction. In a case[16], when a person was suffering from high blood pressure or similar type of disease, almost for which continuous medicine is essential, and he is not allowed to take medicines the men develop serious health problem or dies. The Apex Court held it to be a case of custodial torture and the State was made liable for damages for their gross negligence in protecting the person in custody.

"Torture is 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

Custodial torture ranging from assault of various types to death by the police for extortion of confessions and imputation of evidence are not uncommon. Such a method of investigation and detection of a crime, in the backdrop of expanding idea of 'humane' administration of criminal justice, not only disregards human rights of an individual and thereby undermines his dignity but also exposes him to unwarranted violence and torture by those who are expected to 'protect' him[2]

In India where rule of law is inherent in each and every action and right to life and liberty is prized fundamental right adorning highest place amongst all important fundamental rights, instances of torture and using third degree methods upon suspects during illegal detention and police remand casts a slur on the very system of administration.[3] Human rights take a back seat in this depressing scenario. Torture in custody is at present treated as an inevitable part of investigation. Investigators retain the wrong notion that if enough pressure is applied then the accused will confess.[4] The former Supreme Court judge, V.R. Krishna Iyer, has said that custodial torture is worse than terrorism because the authority of the State is behind it.

It is a paradox that torture continues to exist in India. This is because India is a liberal democracy with very clearly articulated constitutional and statutory provisions against torture that are constantly being developed and monitored by a strong and independent judiciary. This raises the question: how does torture continue to persist in India?[5]

[2]K.I. Vibhute, Criminal Justice-A Human Right Perspective of Criminal Justice Process in India, (EasternBook Company, Lucknow, 1st Edition, 2004) p. 219

[3]The Sikh Coalition, Custodial Deaths in Punjab; 1997-2001, http://www.sikhcoalition.org/HumanRights4.asp (Visited on January 18, 2010)

[4]Asian Human Rights Commission, INDIA: Government of Kerala must criminalise torture to prevent custodial deaths.

[5]Jinee Lokaneeta, Torture in Postcolonial India: A Liberal Paradox?, http://www.wickedness.net/els/els2/lokaneeta paper.pdf (Visited on January 19, 2010)

The crudity of criminal investigation is often blamed on the crudity of resources: the lack of scientific equipment and professionally-trained persons to do the job properly. Although this is an element in the problem, it is not the central one. More important is the sheer impunity enjoyed by law enforcers. This impunity is allowed to flourish for want of laws criminalizing and punishing custodial torture, and also due to corruption and the wanton degeneration of courts and other institutions for the maintenance of law in India. Where a torture victim must wait for years in hope that a judge may one day take up his/her case, while meanwhile the perpetrator is being promoted, the very concept of justice is undermined.

Custodial torture is universally held as one of the cruelest forms of human rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC) and the United Nations forbid it. But the police across the country defy these institutions. Therefore, there is a need to strike a balance between the individual human rights and societal interests in combating crime by using a realistic approach.[6]

2.2.1 Custodial Torture and Death-The Current Status :

The World Medical Association, in its Tokyo Declaration, 1975, defined "torture"[7] 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".

Custodial torture, often known as extra-judicial executions has been on a rise in India especially between 2002 and 2007. According to Asian Centre for Human Rights, the nationwide figures are four custodial deaths per day.[8] There have been 7468 reported custodial deaths in this five year period. However, the severity of the torture in India is far worse than statistics suggest. This is

[6] Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260
[7](1999) 7 SCC (Jour) 10
[8]Merinews.com, Indian jails cause rise in custodial deaths,
http://www.merinews.com/catFull.jsp?articleID=139864 (Visited on January 23, 2010)

because victims rarely report cases against the police due to fear of reprisals. More than half the cases of custodial torture are not even reported.[9]

While award of compensation in 684 cases of custodial violence was given by the National Human Rights Commission alone from 1994 to 2007, conviction of only seven police personnel in 2004 and 2005 took place as against these overwhelming figures of custodial torture and subsequent deaths. This has led to a deep concern among the authorities.[10]

The explanations for torture can be broadly discussed under categories such as role of media, colonial origins, and institutional weaknesses. Firstly, there is a strong sense that the media exaggerates the incidents of torture and creates a negative image of the police. Second, scholars contend that the current police still suffer from the impact of their colonial origins as a repressive instrument of the police raj (rule). As a result, the "police mindset is steeped into colonial era when the police were supposed to treat every Indian as an enemy of the state." Third, there is constant pressure on the police from all quarters including politicians and bureaucrats to show instant results. The lack of adequate facilities and personnel for investigation and the extremely high case load with an inefficient supervisory structure also hinders the ability of the police to produce the results required of them, prompting them to take short cuts. In addition, the lack of training in human rights is considered a primary reason why third degree torture continues to exist in India.

For instance, the recent cases of custodial killings reported from the state of Gujarat show a consistent and alarming pattern of tolerance of the use of torture by the government and promotion of it as if it is an essential element of law enforcement and investigation of crime. In Gujarat, the interrogation centres -- often torture chambers -- of the state police have been functioning in full public view. The suspects are brought in, kept in illegal detention and tortured as part of questioning and later killed and declared as killed in encounter. This procedure is public knowledge, yet no one dares to challenge it. Officers, right from the top are involved in this endeavour.

In a proceeding in the Supreme Court regarding this, the state government admitted in court that it was aware of the existence of the interrogation and torture centres. The government also admitted

[9]Vibha Sharma, Human Rights: 7,468 custodial deaths in 5 yrs, http://www.tribuneindia.com/2008/20080628/nation.htm#3 (Visited on January 23, 2010)

that in several cases the officers might have also killed the witnesses of arrest and detention in order to avoid questions at a later stage. The Gujarat experience, while being a shocking revelation of the state of policing in that state is also the proof that the public could be forced to silence, if the state so requires, by imparting fear.

Interrogation centers in India are run in the cover of prevention of terrorist activities. Interrogation centers are not limited to the state of Gujarat. In several other states like Uttar Pradesh, Madhya Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh and Rajasthan the state governments run similar centres. In some states these centres are run in the name of anti-naxalite action.

In the state of Chhattisgarh for example, the naxalite and anti-naxalite activity has killed hundreds of innocent people. Use of brute force by the state and non-state actors irreparably destroys the social fabric. Besides promoting private armed groups, the state has also pressed into use questionable legislations like the Chhattisgarh Special Public Security Act, 2005. This statute is so loosely worded that anyone could be charged for a crime in this law. Many accepted legal norms in criminal law like non-retroactivity is negated in this statute.

Violence is used widely with impunity in the North-Eastern states. The state of Manipur in particular, is completely militarised. The paramilitary and the army detachments stationed in that state is notorious for the use of torture and violence as the only tool for investigation. Cases reported from Manipur, are mostly involving the armed forces, the Assam Rifles in particular.

Administrative neglect promoting the use of torture is misused by the police and other law enforcement agencies as an excuse for demanding bribe and for not doing their job according to the law. Continuing neglect by the government has also considerably reduced the morale of the law enforcement agencies. Rather than being considered as an essential state service police and other law enforcement agencies are viewed as state sponsored terror agencies mostly filled with criminals.

Through the ages, people have been organizing themselves into associations of an ever-increasing size to nurture common individual interests. Within these associations, the people surrendered themselves to the authority of the ruler whom they choose. To this end, Use of the authority and

legitimacy bestowed on such a ruler by the people, he/she is able to administer the territory by ensuring that law and order are maintained. The ruler is therefore under both moral and legal obligation to ensure adequate protection for the people.

The people, by coming together, formed a formidable and unified entity with various Us attributes; for instance, guarding against any external aggression, maintaining law and order within the society and ensuring a conducive atmosphere for peace and harmony and common good. Terry Nardin specified the common good as having to do with peace, India, Justice, protected liberty and guaranteed rights, authority clearly defined and circumscribed by law. This assertion was strongly supported by Freedman, who said:

"now, since men can by no means engender new powers, but can only unite and control those of which they are already possessed, there is no way in which they can maintain themselves save by coming together and pooling their strength in a way that will enable them to withstand any resistance exerted upon them from without. They Ust develop some sort of central direction and learn to act in concert[10].

In order to continue to maintain this common good, the whole strength of the community will be enlisted for the protection of the person and property of each constituent member. This union will create harmony and obedience to the authority. These associations are entities which we currently refer to as States. International law has been described as one of the possible sets of laws for ordering the world being based on the wills of all or many nations. Largely as a result of its very nature that is, the fact that it composes of many sovereign States co-existing together, the international community IS characterized by the absence of any defined sovereign or formal structure comparable to that present within national jurisdictions[11] It has often been recognized by liberals as well as others that the common good of an association of free individuals may require that the associates be educated not only to respect the laws but also in honesty, tolerance, self-knowledge, fraternity, and other moral values. In addition to state actors, other organizational frameworks are gaining importance. One example of it is the United Nations. It is however clear that States have become more and more dependent on each other, a phenomenon perhaps largely

[10] Chattopadhyaya. B. D., Representing the Other" Sanskrit Sources and the Muslims (Eighth to Fourteenth Century). (1998) . Manoh"r Publishers. New Delhi .
[11]Eaton, R., Essays on Islam and Indian History. cd. (2000)., Oxford University Press .Delhi. P 78

attributable to the growing 'institutionalization' of the international community and the phenomenon of globalization.

Interdependence requires regulation., Although this is sometimes achieved by way of agreements reached between individual States the lacuna is also filled through the recognition by individual States of a so called international 'conscience' which imposes legal regulation on the actions of States and in so doing ensures international respect for basic social values.

Similarly, this is reflected in the so called international moral infrastructure which itself is subject to normative principles and disciplines. These principles were eventually also accepted as common standards for interstate relations.[12]

These standards have been universally accepted by States in the form of the principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights. As a result of the regulation of States by international law, the concept of 'national sovereignty' has undergone an evolution and today States are regulated by both their own national rules together with the continually developing laws of the international community. These laws were developed or were created not by an international legislator or sovereign, but generally through the consensus of States which have recognized that certain 'values' amount to valid legal norms which must be respected among States. It may be plausible to suggest that the prohibition and prevention of torture and ill treatments are part of the standards that have been universally accepted by the international community.

2.3 CUSTODIAL VIOLENCE IN ANCIENT INDIA-

The basic concept of governance in ancient India was of dharma and danda. The ‘dandniti’ was an essential ingredient of state craft. In dharma sutras proper wielding of ‘danda’ was held to be an

[12] Elliot. II. M., and Dowson, J. The Ilistol) of India as Told by Its O"n Ilistorians The Muhammadan Period, (1964). vol. II. Kitab Maha\. Allahabad. P- 125

important duty of the king. The basic unit of policing was the village; a village being an aggregation of families together with their land and pastures surrounding the village. Every village had its local court which was composed of the headman and the elders of the village. The courts decided minor criminal cases such as petty theft as well as civil disputes. The Mahabharat mentions Gramadhipati and the Buddhist jatakas speak of Grambhojaka. Nagaraguthka was responsible for arresting and executing robbers.

There is reference in Ramayana about the police as the regulative mechanism for peace and order. The ancient Indian lawgiver, Manu, refers to the police function prevalent in his times for the prevention and detection of crime. In the code of Manu there are reference of police system. Manu classified police into two function departments, namely, the criminal investigation department and the law and order wing. The criminal investigation department was subdivided into two units – one for collection ofcriminal intelligence and investigation of crimes and the other for collecting intelligence for the security of important dignitaries, prevention and prosecution of economic offences and undertaking espionage. Manu had suggested extensive use of the secret agents whose activities were of secret and confidential nature.

2.3.1 KAUTILYA'S ARTHSASHTRA

Kautilya's Arthsashtra speaks about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, cutting of limbs and multilation etc. Manu, the law giver of this age emphasized the necessity of torture to protect the society from the hands of criminals.

2.3.2BUDDHIST PERIOD

The Buddhist period (320 B.C.-300 A.D.) was an age of great humanitarianism and the administration of justice had become conformably influenced by humanitarian ideals. Custodial torture in any form was strictly forbidden and special favours were shown to prisoners who happened to be women, aged or who had many dependents.

2.3.3 GUPTA PERIOD

In the Gupta period (320A.D.-500A.D.) if facts against a prisoner were not clearly established by evidence then recourse to four kinds of ordeals was meted out. Trial by ordeals was fairly common.

During the six and a half centuries intervening between the deaths of Harsha in 650 A.D.to the rise of Mohamaddan power, not much information is available about the criminal justice system. Generally speaking, a medley of petty Hindu kingdoms with ever varying boundaries was ceaselessly engaged in dynastic wars.

In the Mohammadan period the Shariat law was applied to crimes. An eye for an eye, tooth for a tooth, cutting of limbs and torture to extract confession was wide spread. A thief's hands were to be cut off and the adulterer and the adulteress were stoned to death. Any other form of compensation to the next of kin or the sufferer himself was not accept.

2.3.4 MUGHAL PERIOD

Under the Mughal's regime, no criminal or civil code existed. The Shariat law was in force. Torture in custody to extort confession was widespread. But the quality of justice dispensed by successive emperors was by no means uniform. Akber centainly tried to avoid harsh treatment to prisoners by Akbar were absent from Jahangir's dispensation of justice. Under Jahangir, trial were quick and so also were executions, hangings, beheading, impaling, killing with daggers, by elephants, serpents etc.

Shahajahan was capable of even greater ferocity and cruelty than Jahangir and took a savage pleasure in witnessing the execution of punishment that he had decreed. Aurangzeb, on the other hand, in his efforts to attain the ideal of strict Muslim and to follow the law and traditions of Islam in every detail of his administration and personal conduct, erred in the opposite direction. His administration was ruthless and in administrating criminal justice he differentiated between Hindus and Muslims. Hindus were tortured and punished more severely than Muslims for the same offence.

The key police functionaries during the Mughal period were Faujdar and Kotwal. A number of villages were grouped together to form a Mahal or Parganah. Anumber of Parganahs formed a Sarkar and a number of Sakars formed a Subah or Province. The Kotwal was responsible for policing the towns, cities and their suburbs. The functions of the kotwals are mentioned in Aini-i-Akbari. He prevented crime and social abuses, regulated cemeteries, burials, slaughter houses, jails and took charge of heirless property. He patrolled the city at night and collected intelligence from paid information on men and matters.

The Faujdar was the head of the Sarkar and commanded troops to suppress rebellion and disorder in the area mainly under his jurisdiction. Although he was subordinate to the provincial Governor, he could directly communicate with the Imperial Government. He dispersed and arrested robber ganges and took cognizance of all violent crimes, hunt down bandits, prevent manufacture of fire-arms, arrest disturbance of peace and assist the Malguzars in the collection of revenue by making demonstrations of force to overcome oppositions, wherever necessary. In practice the Zamindarwas made responsible for peace and security of the people in his zamindari. The Faujdar was only to ensure that the zamindars did their job rightly.

2.3.5 BRITISH PERIOD

Not surprisingly the British conveniently ignored all the recommendations of reform in the system and brought about changes in a piecemeal manner in accordance with their convenience and political expediency. The company initially relied on the traditional system and managed policing through the zamindars, vesting revenue and magisterial functions in the Collector, who was also given a firm control over the police administration. The policing was not taken away from the zamindars till 1792.

When the weaknesses of this system were exposed to the Court of Directors of the Company, it sent Lord Cornwallis as a Governor General to bring about the reforms. He dissolved the police system under the zamindars and criticised the system of 'granting meager salaries to men employed in high trust. He introduced a number of reforms like separating judicial and revenue functions which were further strengthened by his successor Sir John Shore. The cardinal principle of the administration of criminal justice and the police set up by Lord Comwallis in 1792-93 was a complete separation of judicial and executive from revenue functions. [13]

Sir Thomas Munro, the governor of Madras Presidency in 1821 said "No police which is contrary to the feelings of a country can ever be successful, and it would be better to have no district police at all than one under the management of Darogha." Thus in spite of the reservations expressed by people like Cornwallis, the police and the criminal justice systemremained interwoven with the revenue administration, the logic of which is not very difficult to understand. 54 3The shortcomings and inefficiency of this system was clearly visible to the enlightened British opinion.

[13] Apama Sreevastava, Role of Police in a Changing Society (1999), p. 8.

The police commission of 1838 observed that the inefficiency of that system is in a great measure attributable to the inadequate scale on which it has hitherto been carried on; no improvement without considerable expense will be practicable. Yet reform suggested by the Committee were not accepted by the government due to financial considerations. [14]

The philosophy of human rights in the modem sense has taken shape in India during the course of British rule. The Indian National Congress, which was in the vanguard of freedom struggle, took the lead in this matter.56 5The Indian Penal Code came into effect in 1860 comprising 511 sections dealing with all types of offences against State, all Armed Forces, the public tranquility, the public servants, the election, contempt of lawful authority of public servants, weights and measures, public health, safety, decency and morals, offences against human body, wrongful restraint and confinement, criminal force and assault, offences relating to property including theft, extortion, robbery, dacoity etc., misappropriation, cheating and breach of trust, fraudulent deeds and dispositions of property, mischief, trespass, documents and property frauds (forgery etc.), currency notes and bank. notes, contract of service, marriage including adultery, defamation, intimidation, insult and annoyance and finally attempt to commit any offence involving imprisonment. The precise definition of acts and omissions constituting an offence with the nature and quantum of the punishment to be awarded was elaborately indicated. Further the Indian Penal Code enacted in 1860 made torture a punishable offence.

The first Code of Criminal Procedure which was passed in 1861 was repealed and replaced by the Code of 1872. That too was repealed and replaced by the Code of 1882 which was replaced by the Code of Criminal Procedure (Act V of 1898) 1898 and was amended in 1973.58 The Code of Criminal Procedure, 1898 laid down many procedural rights and privileges of the arrested persons the salient amongst them are right of being produced before a magistrate59 right to know grounds60 right to counsel61 right against testimonial compulsion62, right ofbail63 etc. As a result of the report of the Torture Commission the Indian Evidence Act passed in 1872 made confessions to police officers inadmissible in evidence.64 It depicted the quality and quantum of the evidence required to prove or disprove facts comprising the ingredients of the offences. Both the criminal

[14] Ibid.

and civil proceedings were brought in its ambit. 65In this Act the procedure to be adopted by trial courts for dispensation of justice was minutely codified.

In addition, 'Police Regulations' were framed in each province throughout the country governing the conduct, training, discipline, dereliction of duty and the resultant punishment to be meted out to the delinquent police personnel. By the implementation of these regulations, a reasonably trained, disciplined and responsible body of police officers and men was provided to each province.

In spite of the Police Act of 1861 which was supposed to have set up an organised civil constabulary under the control and supervision of the Magistracy the Government were not satisfied with the role performance of the police. Accordingly the second Police Commission was appointed on July 9,1902 by the Government of India.

2.3.6 POST INDEPENDENCE PERIOD

After Independence, several Police Commissions were appointed by Union and State Government to took into the performance and methods of working of the State Police during 1950s, 1960s, the early 1970s and 1980s all most all these Committees and Commissions have revealed the tale of third degree or torture in police custody due to political ends, training etc. The recommendations of most of these Commissions were mainly concerned with the details of the administrative set up, the strength of the Police Force in different wings of the system, the relationship between Police and the Principle District Collector, pay and allowances for the Police in different ranks, qualifications for recruitments, setting up of training centers and the like.Shah Commission (1978) observed the police brutality on a wide range during the emergency from 1975 to 1977. The Commission drew attention of the Government the way police behaved during the emergency as hey were not accountable to any public authority. In its recommendations, the Commission told to the Government to take measures to insulate the police from illegitimate political and executive interference.

2.3.7 THE NATION POLICE COMMISSION (1979-81)

The National Police Commission examined in detail the issues pertaining to police functioning inter alias in its eight reports. In its first report, the Commission observed:Police are frequently

criticized for their use degree methods during investigation while examining suspected or accused persons. Police brutality in their handling suspect is referred to in some context or the other in the literature on police forces in several countries of the world, and the Indian Police is no exception. Interrogation of a person, whether he be a witness or suspect or accused, is a difficult and delicate exercise for any police officer and calls for enormous patience and considerable understanding of human psychology.

Unfortunately several police officers under pressure of work and driven by a desire to achieve quick results, leave the path of patient and scientific interrogation and resort to the use of force in different forms to pressure the witness or suspect or accused to disclose all the facts known to him.

The National Police Commission recommended that there should be mandatory judicial inquiry in cases of deaths and raps in police custody. The judicial inquiry should be held by an Additional Session Judge nominated for this purpose in every district by the state government in consultation with the High Court. The nominated judge would be designated as the District Inquiry Authority (DIA) and assisted by an assessor. The DIA shall send the report of the inquiry to the State Government it will be mandatory on the part of government to publish the report and decisions taken thereon within two months of receipt of the report. At district level, surprise visits to police stations and similar units by the senior officers would help the immediate detection of persons held in custody and subject to ill-treatment. Malpractices, if any, noticed during such visits should be met by swift and deterrent punishment. Unfortunately, the valuable recommendations of National Police Commission were overlooked by the government.

2.3.8 REBEIRO COMMITTEE (1998)

Rebeiro committee examined the relevance of valuable recommendations of the National Police Commission in changing environment of the country. The Committee recommended setting up of the Police Performance and Accountability Commissions at the State level, constitution of a District complaint Authority (DCA) to examine the complaints from the public of the police excesses including arbitrary arrests and detention, false implications in criminal cases and custodial violence. Further the Committee recommended separation of investigation functions from law and order work and replacement of the Police act, 1861 with a new Act etc. but sadly the recommendations have not been implement.

2.4 MALIMATH COMMITTEE ON REFORMS OF THE CRIMINALJUSTICE SYSTEM (2003)

The Malimath Committee highlighted various issues associated to the criminal justice system in general and police system in particular. The Committee has examined the fundamental principlesof the functioning of the Criminal Justice System such as right to silence, rights of the accused, presumption of innocence and burden of proof, justice to the victims of crimes etc. in detail. The Committee observed:

"Manner in police investigations are conducted is of critical important to the functioning of the criminal justice system. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on thorough and careful search for truth and collectionof evidence, whether for or against suspect. Protection of the society being of paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed ".

However, the Malimath Committee report met with several criticisms by the Amnesty International India and International Commission of Jurists, (2003) including other human rights organizations in the country. In recent years, the discourse of police reforms institutionalized mechanism to effectively deal with bonafide public complaints against the police including custodial violence and the audit of police performance, as well as police accountability towards people of country have been discussed at the legislative, judicial and executive levels. In this regard, Supreme Court heard a writ petition filed by two retired police officers and a non-governmental organization demanding implementation of the National Police Commission reports. The Apex Court passed the ruling in 2006 which is a historic judgment on police reforms known as the Prakash Singh vs. Union of India. The judgement dealt with three aspects of policing - autonomy, accountability and efficiency. The court issued the following directions to the Central Government, State Governments and Union Territories for compliance till framing of the appropriate legislations: Nation Security Commission, State Security Commission, Selection and Minimum Tenure of DGP, Minimum Tenure of Inspector General of Police and other officers, Separation of Investigation, Police Establishment Board and Police Complaint Authority.

2.4.1 POLICE ACT DRAFTING COMMITTEE (2005)

In this regard, the Government of India, having visualized the long felt need to replace the outdated Police Act, 1861 set up a Police Act Drafting Committee (PADC) IN SEPTEMBER 2005 TO DRAFT A NEW Police Act that could meet, inter alia, the growing challenges to policing and to fulfil the democratic aspirations of the people. In drafting the Model Police Act, 2006 the Committee was guided by the need to have a professional police 'service' in a democratic society, which is efficient, effective, responsive to the needs of the people and accountable to the Rule of Law. The Act provides for social responsibilities of the police and emphasizes that the police will be governed by the principals of impartiality and human norms, with special attention to protection of weaker section of society including minorities.

Most recently, the 5th Report of second Administrative Reforms Commission (2007) on public Order and the Draft Report of National Policy on Criminal Justice System (2007) emphasized that the issue of custodial violence needs to be looked and dealt with seriously and with promptitude, with a view to eliminating this malaise from the system. the main reason for the growth of torture is the investigating officer's over zealousness to secure conviction since convection is considered as the yardstick to access the merit of an investigating officer. The craze for conviction becomes so much rampant that the system of investigating itself undergoes almost a reverse process. In sprite of the various provisions inscribed in the Constitution of India and other statutory laws, the crimes of custodial violence, rape and death is still increasing.[15]

Right to life is an evolution from the concept of nature rights. Nature rights are inherently moral rights which every human being at all times ought to have simply because of the fact that he is a rational and a moral being. According to the doctrine of nature right man was believed to have a fixed and unalterable nature which gave him certain rights without which he ceased to be a human being and these were right to life, liberty and property. The natural rights are given by god to man, they are inherent, fundamental and sacred rights which can neither be taken away by any individual nor be restricted by any authority.

A death in police custody is made to look a suicide or an accident and the body is disposed of quickly without postmortem. The records are manipulated and evidences are destroyed to shield

[15] Human Rights: Commitment and Betrayal (1996)

the police personnel responsible of the offence. Political influence is used to hush up the matter and thus crime goes unpunished. The relatives and friends of the victims are unable to seek justice because of fear, poverty and ignorance of law. Most of the tortures and custodial deaths occur while the police try to extract confessions from the accused during interrogation. This development is disastrous to our human right awareness and humanist constitutional order.

According to Mahatma Gandhi, our father of the nation, prisons and hospitals and other such types of care taking institutions are the places of correction, reconciliation, reformation and a centre of training for rehabilitation. But even today, they are, on the contrary, seed-beds of vices, totally undignified and absolutely inhuman. Thousands of people including men, women and children and condemned to live in sub-human conditions which physically, mentally and morally lead to the wreckage of human lives and their families.

As mostly the victims of custodial crimes belong to the weaker sections of society. In the event of death of the earning member of a poor family in custody, the family members of the deceased are left to lead a pathetic life in penury. Various Enquiry Commissions appointed by the Government to inquiry into custodial deaths have recommended the amendment of the law, providing for relief and rehabilitation to the family members of the deceased. The supreme Court and other courts have also directed the State to pay damages to the affected family members. The State functionaries including the Chief Ministers and Home Ministers have been granting ex-gratia payment to the affected family members of the victims of custodial crimes, but the existing law does not adequately provide for the grant of compensation or damages to the affected family members, nor there is provision for granting interim relief. No doubt relief for damages may be claimed in tort through a civil suit but the legal position in this respect is unclear and the process of civil suit is too cumbersome, making it illusory.

CHAPTER 3

CUSTODIAL TORTURE: CONSTITUTIONAL AND LEGISLATIVE PROVISIONS IN INDIA

CHAPTER 3

3.CUSTODIAL TORTURE: CONSTITUTIONAL ANDLEGISLATIVE PROVISIONS IN INDIA

The rule of law means that no one shall be deprived of his liberty except with the authority of a law and all persons shall be equal before the law. It means that even the Government and its agents have to act according to and within the limits of the law[16] . In a democracy and under the Indian Constitution, the police as representative of a State who's sovereignty lies in the Indian people are public servants and the police station is a public property. The conduct within it should conform to law, needs to respect basic human freedom to ensure a basic confidence between the people of a city, State or region and the wings of the State, the law and order machinery, i.e., the police. Custodial torture, inhuman treatment, handcuffing prisoners, third degree methods which are often Used and practiced by police officials during the course of their official duties are against the norms of the civilised nations and are barbaro Us activities violative of the principles of rule of law and human dignity. The main objective of the police is to apprehend criminals, to protect law abiding citizens, to prevent commission of crimes and to maintain law and order[17]

.Torture has been practiced frequently in India regardless of the Government in power. Torture is committed on a regular basis by enforcement officials in the course of criminal investigations. As per International Rehabilitation Council for Torture Victims, the most likely perpetrators to be involved in torture and other forms of ill treatment are: the police, the military, paramilitary forces, State controlled forces, Governmental officials, health professionals and co-detainees acting with the approval or on the orders of public officials[18]

In India the main perpetrators of torture have been police officers and other law enforcement officials, such as paramilitary forces and those authorities, who have the power to detain and interrogate persons.

In India, torture is not expressively prohibited by the Constitution but the Ministry of Home Affairs

[16] Dr. S.P. Sathe, "Liability of a Police Officer for Custodial Death: A Note" A shwatthe, Vol.4 Issue 1 (January-March, 2004).

[17] H.H. Singh, "Importance of judicial activism in preventing custodial violence" Central India Law Quarterly, Vol. XVI, 431 (2003)

[18]International Rehabilitation Council for Torture Victims, "What is Torture?" available at: www.org/whatis-orture/defining -torture.aspx (visited on 25 March 2010).

has claimed that Indian law contains adequate provisions for safeguarding human rights and sufficient safeguards against police brutality and torture also exist. Although, the prohibition of torture in specific terms lacks Constitutional authority, Indian courts have held that Article 21 of the Constitution implies protection against torture.

3.1 PROVISIONS UNDER THE INDIAN LEGAL SYSTEM: TO PROTECT A PERSON FROM INDIA, CUSTODIAL TORTURE

Protection against Conviction or Enhanced Punishment under Ex-Post Facto Law Article 20(1) of the Constitution of India provides that, no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to any greater penalty than that which might have been inflicted under the law in force at the time of the commission of an offence.

The concept of ex-post facto law has its roots in the maxim nulla poena sinelege, which profounds the idea that no man shall be made to suffer except for a distinctbreach of the criminal law. The implications of this maxim can be broadly stated asunder:-

- It prohibits retrospective imposition of criminality.
- It prohibits the extension by analogy of a criminal rule to cover a case notobviously falling within it, and.
- It prohibits formulation of the penal laws in excessively vague and wide terms.

Article 20(1) sets two limitations upon the law making power of every legislative authority in India as regards to retrospective criminal legislations. It prohibits –them a king of an ex- post facto criminal law i.e. making an act a crime for the first time and making that law retrospective and the infliction of a penalty greater than that which might have been inflicted under the law, which was in force when the act was committed.

Distinction between ex-post facto law and retrospective law was first time disc Used in case of Colden v Bull [19] In this case Court observed, “Every ex-post facto lawUs necessarily be retrospective but every retrospective law is not ex-post facto law. Theformer only is prohibited. Every law that takes away or impairs, rights vested agreeably to existing laws is retrospective and

[19]1978(3) Dallas 386 at 391.

generally Us and may be oppressive, it is a good general rule that a law should have no retrospect, but there are cases in which the laws may India, Utley and for the benefit of the community, and also of individuals, relate to a time antecedent to their commencement, as stat Us of oblivion or a burden that creates or aggravate, the crime or increase the punishment or change the rules of evidence for the purpose of conviction. There is a great and apparent difference between making an unlawful act lawfully and the making an innocent action criminal and punishing it as a crime".

The concept of ex-post facto law as provided under the Constitution of India is recognized under the international instruments as Article 11(2) of the Universal Declaration of Human Rights provides that 'no one shall be held guilty of any penal offence on account of any act or omission, which did not constitute penal offence, under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed'. Article 15 of the International Covenant on Civil and Political Rights provides that 'no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If subsequent to the commission of the offence, provision is made by law for imposition of lighter penalty, the offender shall benefit there by'.

Articles 245, 246 and 248 of the Constitution confer power on the Parliament and the State Legislature to make laws. There is nothing in these Articles to provide that the Indian legislatures do not possess the right to make retrospective legislation which every sovereign legislature possesses[20] . However, the only express limitation imposed upon the power is retrospective legislation that is contained in Article 20(1)[21].

In Shiv Bahadur's[22]case it was observed that prohibition contained in the Article 20(1) is not confined to the validity or passing of the law but extends to conviction or sentence based on its character as an ex- post facto law. Article 20(1) prohibits the creation of a new offence with

[20] Sunder Ram Iyer v State of A.P, (1959) SCR 1422.
[21]Rama Krishna v State of Bihar, AIR 1963 SC 1669
[22]Shiv Bahadur v State of West Bengal, AIR 1953 SC 394.

retrospective effect. It does not prohibit the creation of a new rule of evidence or a presumption for an existing offence.

In Soni Devrajbhai Basubai's case the Supreme Court clarified the scope of Article 20(1). In this case dowry death punishable under the newly inserted Section 304-B of Indian Penal Code was sought to be made applicable against the respondents. The appellant's daughter was married to the respondent on 13 AugUst 1986, and she died under mysterioUs circumstances. The appellant suspected foul play and got a case registered under Section 498-A read with Section 34 of IPC. He further applied for a petition seeking the addition of the charge under newly inserted Section 304-B of IPC which had become effective from 19 November 1986. The Supreme Court held that as on the date of the death of daughter of the appellant, Section 304-B of IPC had not come into existence and therefore the protection of Article 20(1) of the Constitution of India would be available to the accused persons.

The words 'penalty greater than which might have been inflicted' mean a person may be subjected to only those penalties which were prescribed by the law that were in force at the time when he committed the offence. If an additional or higher penalty is prescribed by any law made subsequently to the commission of the offence that will not operate against him in respect of the offence in question. However, the Article does not prohibit the substitution of a penalty which is not higher or greater than the previous one.

3.1.1Protection against Double Jeopardy

Article 20(2) of the Constitution of India provides that, no person shall be prosecuted and punished for the same offence more than once.

Article 20(2) is based on the maxims nemo debet bis vexari, si constat curiae quod sid pro una et eadem causa, which means that no one must be vexed twice if it appears to the court that it is for one and the same cause.

Not only the Constitution of India but also Section 26 of the General Clauses Act, 1897 provides that, 'where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same offence,' and Section 300 of the Criminal

Procedure Code, 1973 have recognized the same right of an accused person. Provision of Section 300 of Criminal Procedure Code, 1973 is wider in their ambit in contrast to Article 20(2) of the Constitution of India. This is so as the Constitutional protection is available only to an accused person who has been prosecuted and punished, whereas under the Criminal Procedure Code, 1973 the protection offered also extends to an accused person who had been prosecuted and acquitted.

To cover under the provisions of clause (2) of Article 20, the following conditions are necessary:-

There must have been a previous proceeding before a court of law or a judicial tribunal of competent jurisdiction; and the person must have been 'prosecuted' in the previous proceeding.

There should be not only a prosecution but also a punishment in the first instance to operate as a bar to a second prosecution and punishment for the same offence[23].

The application of the benefit is for an offence and in a judicial proceeding only[24].The benefit does not flow in case of departmental action even though based on same facts

3.1.2 Right not to be Witness against Himself

Article 20(3) of the Constitution of India provides that, no person accused of any offence shall be compelled to be a witness against himself.

The Constitutional protection against testimonial compulsion on the premise that such compulsion may act as subtle form of coercion on the accused and it is also the underlying theme of several statutory provisions – particularly Sections 24-26 of the Indian Evidence Act. Article 20(3) of the Constitution comes into operation as soon as a formal accusation is made whether before the commencement of a prosecution or during its currency In Nandini Sathpathy[25] case, a former Chief Minister of Orissa was directed to appear before the investigating officer in connection with a criminal case registered against her. During the course of investigation she was interrogated with a long string of questions, given to her in writing. She refused to answer the questions on the plea that she was protected against self-incrimination. For her failure to answer the questions put to her,

[23]Venkateraman v Union of India, (1954) SCR 1150.
[24]Pulian Krishna v Pashupati, 1953 CriLJ 294 (Cal)
[25] Nandini Satpathy v P.L. Dani, AIR 1978 SC 1025 see also Smt Salvi and Others v State of Karnataka, AIR 2010 SC 1974.

she was charged under Section 179 of Indian Penal Code. The Court observed that Section 161 of Code of Criminal Procedure, 1973 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) of the Constitution of India goes back to the stage of police investigation not commencing in Court only.

Both the provisions substantially cover the same area, so far as police investigations are concerned. The phrase 'compelled testimony' must be read as evidence procured not merely by physical threats or violence but also by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity and overbearing methods and the like not legal penalty for violation. So, the legal perils following upon refusal to answer or answer truthfully cannot be regarded as compulsion within the meaning of Article 20(3). On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Article 20(3)

Section 163 of the Code of Criminal Procedure, 1973 provides that, (1) No police officer or other person in authority shall offer or make, or caUse to be offered or made, any such inducement, threat or promise as is mentioned in Section 24 of the Indian Evidence Act, 1872 (1 of 1872).

(2) But no police officer or person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will: provided that nothing in this sub-section shall affect the provisions of subsection (4) of Section 164.

Section 164 (4) of the Code of Criminal Procedure, 1973 provides that, Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-" I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be Used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

The right against self-incrimination guaranteed under the Indian criminal justice system is in tune with international law. Article 14(3) (g) of the International Covenant on Civil and Political Rights obliges the State parties to provide some minimum guarantees to persons who are charged with criminal offences as not to be compelled to testify against himself or to confess guilt.

Section 348 of Indian Penal Code, 1860 provides that,whoever wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined to restore or to caUse the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

The right against self incrimination recognizes the fundamental principle of criminal law that the accused must be presumed innocent and it is for the prosecution to establish his guilt.

Section 24 of the Indian Evidence Act, 1872 provides that, a confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

The accused cannot be compelled to make any statement against his will. These propositions emanate from an apprehension that if the statements of the accused were admitted as evidence, then force or torture may be Used by the investigating authorities to trap the accused. This may be prejudicial or against the interest of the accused person. This right seeks to enable him to preserve his privacy, dignity and inviolability of his person from torture.

Section 25 the Indian Evidence Act, 1872 provides that, no confession made to a police-officer shall be proved as against to a person accused of any offence.

Section 26 the Indian Evidence Act, 1872 provides that, no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such persons.

Section 27 the Indian Evidence Act, 1872 provides that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Section 25 of the Evidence Act stipulates that no confession made to a police officer shall be proved against a person accused of an offence. By holding that Section 27 is an exception to Section 25 in State of Bombay v Kothi Kalu Oghed,[26] because as a natural corollary to the proposition that Section 27 is a proviso to Section 25 is that information leading to the discovery of a relevant fact should be given to anyone including a police officer. Although the Supreme Court pointed out that if the accused showed that he was compelled to make a statement before the police, he could claim the privilege against self -incrimination contained in Article 20(3) of the Constitution. However, it is contended that such a protection is illUsionary, as it throw almost impossible burden upon the accused.

How can the accused if 'compelled' in a police station ever satisfy a Court there was compulsion?

The Malimath Committee[27] on Reforms in Criminal Justice System suggested that Section 25 of the Indian Evidence Act should be amended on the lines of Section 32 of Prevention of Terrorism Act to make a confession recorded by a Superintendent of Police (or officer above him) which is also audio or video-recorded admissible in Indian courts as evidence, subject to the condition that the accused was informed of his right to consult a lawyer. It is submitted that this provision is inconsistent with Article 20(3) of the Indian Constitution and Article 7 of the International Convention on Civil and Political Rights which provides that,' no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. The rights against ex- post facto law and self incrimination are made absolute and non-derogable even during emergency.

[26]AIR 1961 SC 1808

[27] Dr. Justice V.S. Malimath, 'Report of Committee on Reforms of Criminal Justice System', Vol. I, March, 2003.

3.1.3 Right to Life and Personal Liberty

Article 21 of the Constitution of India provides that, no person shall be deprived of life or personal liberty except according to procedure established by law.

Article 21 does not contain any express provision against torture or custodial crimes. The expression 'Life or personal liberty' occurring in the Article has been interpreted to include constitutional guarantee against torture, assault or injury against a person.

In Maneka Gandhi's case[28]

, judiciary has expanded the scope and ambit of Article 21 of the Constitution. The right to live under Article 21 is not confined merely to physical existence but it includes within its ambit the right to live with human dignity. In Inderjeet v State of Uttar Pradesh[29], the Supreme Court held that punishment which has an element of torture is unconstitutional. The Court has frowned upon the practice of keeping prisoners condemned to death sentence in solitary confinement apart from Article 21 the Court has also held it invalid under Article 20(2). A person under death sentence is held in jail custody, so that he is available for execution of the death sentence when the time comes. No punitive detention can be imposed on him by the jail authorities except for prison offences. He is not to be detained in solitary confinement as it will amount to imposing punishment for the same offence more than once which would be violative of Article 20(2).

ln Inder Singh v State (Delhi Adm.), the Supreme Court issued certain directions regarding treatment of two young men convicted of murder and sentenced to life imprisonment with a view to reform them. Article 21 of the Constitution is the jurisdictional root for this legal liberalism

In Jolly George Varghese v Bank of Cochin[30], the high value of human dignity and the worth of human person enshrined in Article 21 read with Article 14 and Article 19 obligate the State to incarcerate except under law which is fair, just and reasonable in its procedural essence.

In Raghubir Singh v Haryana24 , the Supreme Court said, "We are deeply disturbed by the diabolical recurrence of police torture resulting in terrible scars in the minds of common citizens

[28]Maneka Gandhi v Union of India, AIR 1978 SC 597.
[29] AIR 1975 SC 1867.
[30] AIR 1980 SC 470.

that their lives and liberty are under a new peril because the guardians of the law destroy human rights."

In **Pram Shanker Shukla v Delhi Administration** , the Supreme Court held that handcuffs are prima facie inhuman, unreasonable, and at first blUsh arbitrary without fair procedure and objective monitoring. The Court recognized the need to secure the prisoner from fleeing but asserted that this does not compulsorily require handcuffing. The guidelines laid down by the Court are:

(i) To be Used only if a person is a) involved in serious non-bailable offences, has been previous ly convicted of a crime; and/or b) is of desperate characterviolent, disorderly or obstructive; and/or c) is likely to commit suicide; and/or

d) is likely to attempt escape.

(ii) Reasons for handcuffing must be clearly recorded in the police Daily Diary in order to reduce discretion.

(iii) Police must first seek judicial permission for the Use of restraint during arrest or on a detainee.

(iv) At first production of an arrested person, the Magistrate must inquire whether handcuffs or fetters were Used, and if so, demand an explanation.

In the case of Sunil Batra (II) v Delhi Administration26 the Court reiterated that "handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice". In Kishore Singh v State of Rajasthan27 case Krishna Iyer, J. has observed, "Nothing is more cowardly and unconscionable than person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berseck regardless of human rights".

In Francis Corali Mullin v Union Territory of Delhi28 the Supreme Court has condemned cruelty or torture as being violative of Article 21 in the following words, "any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an in-road into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with the procedure prescribed by law".

The Supreme Court asserted in Sheela Barse v State of Maharasthra[31] case that prison restrictions amounting to torture, pressure or infliction and going beyond what the Court order authorized were un-constitutional. An under trial or convicted prisoner could not be subjected to physical or mental restraint, which is not warranted by the punishment awarded by the Court or which was in excess of the requirement of prisoner's discipline or which amounted to human degradation30. In Mohan Lal Sharma v State of Uttar Pradesh[32] , the Supreme Court has ruled that it is well recognised right under Article 21 that a person detained lawfully by the police and that legal detention does not mean that he could be tortured or beaten up. If it is found that the police have ill-treated a detenue, he would be entitled to monetary compensation under Article 21.

In D.K. Basu v State of West Bengal[33] , Supreme Court observed, "Custodial violence, including torture and death in lockups, strikes a blow at the Rule of law, which demands that the powers of the executive should not only be derived from law but, also that the same should be limited by law."

Fundamental rights occupy a place of pride in the Indian Constitution. No civilized national can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrest him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights jurisprudence, the answer, indeed has to be an emphatic 'no'. The precioUs right guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under trials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.

3.1.4 Right of Privacy

A citizen to have his hoUse free from snooping by the State and also to have it protected from all other kind of invasion by the authority is of a fairly long antiquity. The right of privacy was advanced in the year 1963 in Kharak Singh v State of U.P.[34] In this case meaning of term 'personal liberty' was considered by the Supreme Court. Both the majority and minority on the bench relied

[31]AIR 1983 SC 378.
[32](1989) 2 SCC 314.
[33] AIR 1997 SC 610 see also Haricharan and Others v State of Madhya Pradesh and Others, (2011) 3 SCR 769, Dr Mehmood Nayyar Azam v State of Chhattisgarh and Others, (2012) 8 SCC 1.
[34]AIR 1991 SC 297.

on the meaning given to the term 'personal liberty' by an American Judgment in Munn v Illinois34 which held that, "Life meant something more than mere animal existence. The prohibition against its deprivation extended to all those limits and facilities by which the life was enjoyed. This provision equally prohibited the mutilation of the body or the amputation of an arm or leg or the putting out an eye or the destruction of any other organ of the body through which the soul communicated with the outer world." Iyyengar, J., in the majority view, categorically refused to accept the American precedents as according to the Court the Constitution of India did not guarantee the 'Right of Privacy'. However, the minority view expressed by Subba Rao, J., relied upon American precedents in highlighting the 'Right of Privacy'.

The Supreme Court, however, emphasized the Right of Privacy of a person forcefully in State of Maharashtra v Madhukar Narayan Mardikar[35] In this case a departmental proceeding was initiated against the respondent police inspector on the charge that he attempted to trespass into the hoUse of the complainant woman with an intention to have illicit intercourse with her against her wish. As his attempt was strated, he took the plea that the complainant was a woman of easy virtue and he had raided the Use for the purpose of action under the Excise Act. His plea was rejected and on the charge being proved he was dismissed from service. However, the Bombay High Court quashed the said order. Observing, that the complainant was an unchaste woman and it would be unsafe to allow the fortunes and career of a governmental official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. The Supreme Court, reversing the judgment of the Bombay High Court observed that under Article 21 of the Constitution of India. "Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when one likes. So also it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of the law"[36]

Right to be Informed of the Ground of Arrest Article 22 (1) of the Constitution of India provides that, no person who is arrested shall be detained in custody without being informed as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice.

[35] AIR 1991 SC 297.
[36] Id. at 211.

International Covenant on Civil and Political Rights, in Article 9 exha Ustively deals with the rights of the arrested person. It provides, 'Anyone who is arrested shall be informed at the time of arrest, of reasons for his arrest and shall be promptly informed of any charges against him'. It further declares that 'anyone arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorized by a law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial at any other stage of the judicial proceedings and, should occasion arise, for execution of the judgment'. Under this provision different rights of the person arrested are guaranteed. The same are conferred by the Constitution under Article 22 on person arrested.

Section49 of the Code of Criminal Procedure, 1973 provides that, the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Section50 of the Code of Criminal Procedure, 1973 provides that, person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

The right of information of the grounds of arrest would enable the person arrested to prepare for his defence and also to move the court for bail, or writ of habeas corp Us.

Failure of communication of the grounds of arrest would entitle the person arrested to release.

Section 50A of the Code of Criminal Procedure, 1973 provides that,

(1) Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his

friends; relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person[37]

.Section 55A of the Code of Criminal Procedure, 1973 provides that, it shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused .

Section 75 of the Code of Criminal Procedure, 1973 provides that, the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Reply to the question whether a person who is being arrested by another, can be kept in ignorance of the charge made against him, Lord Symonds in Christie v Leachinsky[38] observed, "Blind, unquestioning obedience is the law of tyrants. I would, therefore, submit the general proposition that it is a condition of lawful arrest that the man arrested should be entitled to know why he is arrested, and then, since the affairs life seldom admit an absolute standard or an unqualified proposition, see whether any qualification is of necessity imposed on it. The law requires that, where arrest proceedings on a warrant, the warrant should state the charge on which the arrest is made. I can see no valid reason why this safeguard for the subject should not be equally his when the arrest is made without a warrant. The exigency of the situation, which justifies or demands arrest without a warrant, cannot justify or demand either a refusal to state the reason of arrest or a

[37] Inserted by The Code of Criminal Procedure (Amendment) Act, 2005
[38] 9All ER 567

misstatement of the reason. Arrested with or without a warrant, the subject is entitled to know why he is deprived of his freedom, if only in order that he may without a moment delay to take steps as will enable him to regain it."

In Vimal Kishore's40case it was pointed out that conveying the grounds of arrest will enable the arrested person to prepare for his defence well in time and give him an opportunity to meet the case against him. This also gives an opportunity to arrested person to be in a position to file appropriate application for bail or move the competent court for a writ of habeas corpus, if necessary.

In **Shobharam v State of M.P**[39] as per Hidayatullah, J. "Arrest is arrest, whatever may be the reason for it and the first part of Article 22 (1) enjoins a duty on an arresting person to tell the ground of arrest if made otherwise than under a warrant and if it is made under a warrant, the warrant must itself inform the arrested person with grounds of arrest, so as to enable him to look for the second enshrinement of the right to counsel". It has been also held that even after a person is released on bail, the requirement of furnishing him the grounds of arrest does not come to an end.

In re Madhu Limaya's case, the Court went on record to hold that if the Court finds that the grounds furnished to the arrested person are insufficient and are not intelligible, detention becomes unlawful and the detenue is entitled to be released forthwith. Grounds of arrest should be communicated in a language known to the detenue[40] and should not be vague.

3.1.5 Right of an Accused Person to Counsel

Right to Counsel is a fundamental right under the Constitution of India by virtue of Article 22 (1). The right to consult a lawyer is intended to enable the detained person to secure release, if the arrest is totally illegal.

- to apply for bail, if the circumstances so warrant, to prepare for his defence; and
- to ensure that while he is in custody, no illegality is perpetrated upon him.

[39] AIR 1966 SC 1910.
[40] Harkrishan v State of Maharashtra, AIR 1962 SC 911

Section 41D of the Code of Criminal Procedure, 1973 provides that, when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, through not throughout interrogation.

In **A.K. Gopalan v State of Madras**[41] it is held that the right to counsel as a statutory provision is immune from legislative attack. The question as to the extent of its application came up for consideration and where in case of capital punishment the court did not try to find out whether the accused was unable to employ counsel or incapable of making his own defense and whether they wanted to engage defence counsel, the fundamental right of the accused to be defended by counsel is violated, warranting a retrial of that case. It was pointed that, the right "refers to the same principle that when a person is detained he should get the opportunity not only to know the reasons for his detention but he should also be given sufficient means available to defend himself i.e. no person can be sentenced unless he has been given an opportunity to defend himself."

3.1.6 Right to Speedy Trial

Article 22(2) of the Constitution of India provides that, Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person be detained in custody beyond the said period without the authority of a magistrate.

The right to be produced before a Magistrate under Article 22(2) is intended to enable the detained person-

- To have adequate and defensive opportunity for seeking release on bail and
- Availability on avenue where the person detained can ventilate his grievances that he might have against the treatment meted out to him in custody.
- To have independent scrutiny of the legality of the detention.

Article 9(3) of International Covenant on Civil and Political Rights provides that 'any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time

[41] AIR 1950 SC 27 see also Mohammad Amir Kasab v State of Maharashtra, AIR 2012 SC 3565.

or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and should occasion arise, for execution of the judgment'. Article 14(3) further provides that, 'in the determination of any criminal charge against him, everyone shall be entitled to the certain minimum guarantees, in full equality, inter alia to be tried without undue delay'. Under the Indian Constitution the right to speedy trial has been held as a fundamental right arising within the scope of Article 21.

Section 56 of the Code of Criminal Procedure, 1973 provides that, Person arrested to be taken before Magistrate of officer in charge of police station. A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. Section 57 of the Code of Criminal Procedure, 1973 provides that, no police officer shall detain in custody a person arrested without warrant for a longer period, than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's

3.1.7 Court.

Section 58 of the Code of Criminal Procedure, 1973 provides that, officers-in-Charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, with the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Section 76 of the Code of Criminal Procedure, 1973 provides that, the police officer or other person executing a warrant of arrest shall(subject to the provisions of Section 71 as to security) without unnecessary delays bring the person arrested before the Court before which he is required by law to produce such person:

Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Section 167(2) of the Code of Criminal Procedure, 1973 provides that,(b) no Magistrate shall authorize detention of the accused in India, Custody of the police under this section unless the accused is produced before

him in person for the first time and subsequently every time till the accuse remains in the India, Custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage[42]

Section 167 of the Code of Criminal Procedure, 1973 provides that, Explanation II– If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorizing detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be..

An arrested person should not be confined in any place other than a police station before he is taken to the Magistrate irrespective of the fact that whether the arrest is with or without warrant, the arrested person in India, just be brought before the Magistrate or Court within 24 hours. This healthy provision enables the magistrate to keep a check over the police investigation. It is necessary that the magistrate should try to enforce this requirement and where it is found disobeyed, it should come down heavily on the police

It is well settled that if a police officer fails to produce an arrested person before a magistrate within 24 hours of the arrest, he shall be guilty of wrongful detention. In Hussainara Khatoon's case the Supreme Court found that prisoners were kept in jails in violation of directory provision of Section 167 (2) of Code of Criminal Procedure, without they having been produced regularly before the appropriate magistrates, or without being remanded by the magistrates, often for periods longer than the maximum term for which they could be sentenced on conviction and without their trial having been commenced. Even though many among them were charged with bailable offences, they had not been released because, for reasons of lack of legal aid bail applications had not been made on them behalf, or they being poor they were unable to furnish bail.

The Supreme Court further held that, 'the right to speedy trial is a fundamental right implicit in right to life and liberty of person.' Fair trial implies a speedy trial. No procedure can be reasonable, just or fair unless that procedure ensures speedy trial for determination of guilt or innocence of the

[42]7Substituted by The Code of Criminal Procedure (Amendment) Act, 2008

person accused. In **Kadra Pahadia v State of Bihar** the Supreme Court again reiterated that "speedy trial is a fundamental right of an accused implied in Article 21 of the Constitution".

3.1.8 Protection against Illegal Arrest

India is a party to many International Conventions/Covenants which prohibit torture. But there are no explicit provisions in the Constitution regulating the incorporation of and status of international law in Indian legal system. Article 51(c) stipulates as one of directive principles of State policy, that: "the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised peoples with one another."

Article 253 of the Constitution of India provides that, notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India implementing any treaty or, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

For the successful implementation of International laws in the domestic legal system, they have to be transformed into domestic law by the legislative act and the Union has the exclusive power in this regard under Article 253 of the Constitution and to this end it has passed only Geneva Conventions Act, 1960.

The judicial opinion in India as expressed in numerous recent judgments demonstrates that the rules of international law should be constructed harmoniously, and only when there is an inevitable conflict between these two laws municipal law should prevail over international law.

The **Supreme Court in Chairman, Railway Board v Chandrime Das** [43] observed the applicability of the Universal Declaration of Human Rights and principles thereof may have to be read, if need be, into the domestic jurisprudence. In Peoples' **Union for Civil Liberties v Union of India**[44] the Supreme Court stated that "the provisions of the Covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by Courts as facets of those fundamental rights and hence, enforceable as such."

[43] (1993) 2 SCC 746.
[44] (1997) 3 SCC 433 at 442.

In Vishaka v State of Rajasthan[45] the Supreme Court held that it is now an accepted rule of judicial construction that regards must be had to International Conventions and norms for construing domestic law when there is no inconsistency between them. In Apparel Export Promotion Council v A.K. Chopra[46], the Supreme Court has stated that "In cases involving violation of human rights, the Courts must remain alive to the international instruments and Conventions and apply the same to a given case where there is no inconsistency between the international norms and the domestic law occupying the field."

Arrest means the deprivation of a person of his liberty by legal authority or at least by apparent legal authority. Every compulsion or physical restraint by the police or state authority is not arrest but when the restraint is total and deprivation of liberty is complete, that would amount to arrest. If a person suppresses or overpowers the voluntary action of another and detains him in a particular place or compels him to go in a specific direction, he is said to imprison that other person. If such detention or imprisonment is in pursuance of any legal authority or apparent legal authority, it would amount to arrest. Preventing a person from willing his movements and from moving according to his will amount to arrest of such person. In the Constituent Assembly debates it had been pointed out that, the Usual grounds for such arrests are that there is a credible or reasonable information against that he has committed or is concerned with a cognizable crime or that from his demeanour or other circumstances the officer arresting has reasonable suspicion that he is about to commit such crime for which he has to face trial[47]. The term arrest is not defined in any Statute. However, the lexicon Dictionary has given a meaning of the term arrest as an apprehension of a person by legal authority resulting in deprivation of his liberty . Arrest is a comprehensive term and it essentially includes in effect cases of arrest made by a competent authority and is inclusive of the instances or cases of arrest made by the order of the Civil or Criminal Court. It also can be said to include the cases of arrests so made without a warrant.

The question whether the scope of Article 22 (1) extends to both these types of arrests is not answered in the affirmative. **The Supreme Court in the case of State of Punjab v Ajaib Singh**[48] held that the protective sweep of Article 22 (1) and (2) does not cover the cases of detention made

[45] (1997) 6 SCC 241.
[46] (1999) 1 SCC 759.
[47] Constituent Assembly Debates, Vol.IX, 1509
[48] 91953 CriLJ 180(SC)

under a statute without any accusation of a crime or criminal conduct. The logic of Ajaib Singh was followed by Raj Bahadur's[49] , case by holding that Article 22 (1) and (2) does not cover every case of physical restraint on a person but is limited in scope and provide protection only in respect of certain cases of arrest and detention and not in all cases.

Section 41 is a depositary of general powers of the police officer to arrest, but this power is subject to certain other provisions contained in the Code as well as in the special Statute to which the Code is made applicable. The powers of the police to arrest a person without a warrant are only confined to such persons who are accused or concerned with the offences or are suspects thereof. When an arrest is made under suspicion of the police and police has to carry out investigation without unnecessary delay, Magistrate has to be watchful, as the power of arrest without warrant under suspicion is liable to be abused . Arrest means restrain of liberty of the person. Custody means immediate charge and control exercised by person under authority of law. Taking a person into custody is followed after arrest of the concerned person.

In **Director of Enforcement v Deepak Mahajan**[50] the Supreme Court laid down that in every arrest, there is custody but not vice-versa and custody and arrest are not synonymous terms. Arrest is a formal mode of taking a person in custody, but a person may be in the custody in other ways also. Even the very fact of submission to an interrogation by the police would amount to custody. By going to police station and making a statement which shows that an offence has been committed by him, a person not only accuses himself but also surrenders himself to the custody of the police.

The Royal Commission suggested certain restrictions on the power of arrest on the basis of the necessity principle. The Royal Commission recommends that detention upon arrest for an offence should continue only on one or more of the following criteria:-

- The person's unwillingness to identify himself so that a summons may be served upon him
- The need to prevent the continuation or repetition of that offence
- The need to protect the arrested person himself or other person or property
- The need to secure or preserve evidence of or relating to that offence or to obtain such evidence from the suspect by questioning him: and

[49]Raj Bahadur v Legal Remanabrancer, AIR 1953 Cal.522.
[50] 5 AIR 1994 SC 1775

- The likelihood of the person failing to appear at court to answer any charge made against him
- The Royal Commission also suggested to reduce the Use of arrest, Royal Commission proposed the introduction of a scheme that is Used in Ontario, enabling a police officer to issue what is called an appearance notice. That procedure can be used to obtain attendance at the police station without resorting to arrest provided a power to arrest exists, for example to be fingerprinted or to participate in an identification parade.

It could also be extended to the attendance for interview at a time convenient both to the suspect and to the police officer investigating the case.

Third Report of the National Police Commission suggested that an arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:-

- The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under restraint to infuse confidence among the terror-stricken victims.
- The accused is likely to abscond and evade the process of law.
- The accused is showing violent behaviour and is likely to commit further offences unless his movements are brought under restraint.
- The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again. It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons for making the arrest, thereby clarifying his conformity to the specified guidelines.

The National Police Commission in its Third Report referring to the quality of arrests by the Police in India mentioned power of arrest as one of the chief sources of corruption in the police. The report suggested that, by and large, approximately 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.3% of the expenditure of the jails. The said Commission observed that a major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention.

Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2% of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all[51]

The Tokyo Rules[52] provide a set of basic principles to promote the Use of non -custodial measures, as well as minimum safeguards for person subjected to alternatives to imprisonment. Pre-trial detention is Used as a last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim. Alternatives to pre-trial detention shall be employed at as early stage as possible.

Pre-trial detention shall last no longer than necessary. The judicial authority, having at its disposal a range of non-custodial measures should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted wherever appropriate. Sentencing authorities may dispose of cases in the following ways:-

- Verbal sanctions, such as admonition, reprimand and warning;
- Conditional discharge;
- Status - penalties;
- Economic sanctions and monetary penalties, such as fines and day-fines
- Confiscation or an expropriation order;
- Restitution to the victim or a compensation order;
- Suspended or deferred sentence;
- Probation and judicial supervision;
- A community service order;
- Referral to an attendance centre;
- House arrest;
- Any other mode of non-institutional treatment;
- Some combination of the measures listed above.

[51] Id. at 31.
[52]Proceedings of the 68th Plenary Meeting of the United Nations on 14 December 1990.

It is submitted that these Rules should be incorporated in the Indian legal system as India is bound to put in place all those measures that may pre-empt the perpetration of torture.

Article 3 of Universal Declaration of Human Rights proclaims that everyone has the right to liberty and security, Article 9 of the Declaration provides that no one shall be subjected to arbitrary arrest, detention, or exile. In fact, all the rights mentioned in the Declaration are rendered worthless if a person is not free. This is because such a loss of liberty destroys privacy, violently neutralizing the rights of freedom of movement.

Obviously, it also directly infringes adversely various other rights such as political and economic rights contained in the Declaration.

Some of the internationally accepted control mechanisms to prevent such illegal or arbitrary arrests, under varying legal systems can be summarized as:-

- Limitations on the power of arrest by mandating that before a person can be deprived of his liberty, certain conditions established by law must be satisfied and certain procedures must be followed.
- A system of checks and controls, which forms the part of the process of arrest and detention, provides built-in safeguards against illegal or arbitrary action.
- Legal remedies designed to permit the arrested or detained person to obtain speedy adjudication of the validity of his arrest or detention.
- Civil, criminal and disciplinary sanctions, which act as deterrents to violations of the safeguards established by law against illegal or arbitrary arrest or detention.

The Supreme Court of India in various cases has laid down guidelines and principles of custody jurisprudence; leaving no space for any ambiguity in understanding the spirit behind the Constitutional and statutory provisions relating to human rights and human dignity. Custody jurisprudence includes provisions regarding arrest, handcuffing, custodial crime and victim compensation. The horizon of human rights is expanding, at the same time; the crime rate is also increasing. The Courts have voiced their concern regarding indiscriminate Use and abuse of power of arrest by law enforcement agencies on several occasions. The Apex Court while commenting on the violation of human rights because of indiscriminate arrest observed that, “the law of arrest is one of the balancing individual rights, liberties and privileges on the one

hand and responsibilities on the other hand: of weighing and balancing or 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 the society, the law violation or the abider"

3.1.9 Guidelines on Arrest

In **Joginder Kumar v State of Utter Pradesh**[53] , the Supreme Court set four major guidelines that are to be followed by the police in all cases of arrest. These are:-

- An arrested person in custody is entitled, if he so requests, to have one friend or relative or other person known to him or likely to take interest in him told as or relative or other person known to him or likely to take interest in him told as far as is practicable, that he has been arrested and details as to where he is being detained;
- The officer shall inform the arrested person of the above rights;
- An entry is to be made in the case diary as to who was informed of the arrest (in the concerned case); and
- Departmental instructions are to be issued that a police officer making arrest should record in the case diary, the reasons for making the arrest.

In order to ensure that the above directions complied with; the Court declared that it shall be the duty of the Magistrate (before whom the arrested person is produced) to satisfy that these requirements have been met. Taking cognizance of the reporting of large number of custodial crimes in India, the Supreme Court delivered a historic judgment in **D.K. Basu v State of West Bengal**[54] which laid down rules for custody jurisprudence. The apex court felt the urgency of streamlining the structure and functions of the law enforcement machinery responsible for effecting arrests in the country. The Court observed that there should be more transparency and accountability in the system so far as arrests and detentions of the offenders are concerned. In addition to the statutory and constitutional requirements, it was made mandatory on part of

[53] Ibid
[54] Supra note 32.

the law enforcement agencies to follow the following guidelines at the time of effecting arrest of an offender:-

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.

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 be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

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 arresting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

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 Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

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

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.

The arrestee should, where he/she 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 affecting the arrest and its copy provided to the arrestee.

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 concerned State or Union Territory. Director Health Services should prepare such a panel for all Tehsils and Districts as well.

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

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

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 it should be displayed on a conspicuous notice board at the police control room.

The Court in the same case observed that failure to comply with the requirements mentioned above shall, apart from rendering the concerned official 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 jurisdiction over the matter. The extent of these detailed instructions is itself an indication of judicial concern over illegal detention, torture and custodial deaths. However, an individual being picked up by the police anywhere in the Country is under enormous pressure and he or she would not directly confront the power of the men in uniform. In such a situation, it is extremely unlikely that he or she will be able to insist on the safeguards these judicial orders provide.

The National Human Rights Commission's Guidelines on Arrest the National Human Rights Commission has issued following detailed guidelines regarding arrest, keeping in view various judicial pronouncements

(A) Pre-arrest Guidelines

The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to affect arrest. Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.

After Joginder Kumar's[55] case pronouncement of the Supreme Court the question whether the power of arrest has been exercised reasonably or not is clearly a justifiable one.

Arrest in cognizable cases may be considered justified in one or other of the following circumstances;

i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.

(ii) The suspect is given to violent behavior and is likely to commit further offences.

(iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.

(iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences.

- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission.
- Police officers carrying out an arrest or interrogation should bear clear identification and name tag with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously in a register kept at the police station.

(B) Arrest Guidelines

As a rule, Use of force should be avoided while affecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care

[55] Ibid

must be taken to ensure that injuries to the person being arrested, visible or otherwise are avoided.

The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.

Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy.

Searches of women should only be made by other women with strict regard to decency.

The Use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgment of the **Supreme Court in Prem Chander Shukla v Delhi Administration**[56] **and Citizen for Democracy v State of Assam**[57]

As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.

Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police officers may for this purpose, associate respectable citizens so that the children or juveniles are not terrorized and minimal coercion is used.

Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands.

Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand84

[56] Supra note 25
[57] 2(1995)3 SCC 743.

The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed

If a person is arrested for a bailable offence, the police officer should inform him of his entitlement to be released on bail so that he may arrange for sureties.

Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice.

He should also be informed that he is entitled to free legal aid at state expense.

When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. Only a female registered medical practitioner should examine the female requesting for medical help

Information regarding the arrest and the place of detention should be communicated by the police officer affected the arrest without any delay to the police control room and District/State Headquarters. There must be a monitoring mechanism working round the clock.

As soon as the person is arrested, police officer affecting the arrest shall make amention of the existence or non-existence of any injury on the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to

him stating therein the factual position of the existence or nonexistence of any injuries on his person.

3.1.10. Recent Legal Development

In recent years Criminal Law (substantive and procedural law) have been amended deals with prescribes the duties of the police in arresting offenders, investigation officers and also contains provisions for their prevention of custodial abuses and punitive provisions to ends of justice. Rapes in police custody are normally seen as a stigma on the law enforcing agency by the citizens. Police which is primarily agency for ensuring safety of women, children who were downtrodden is not forgiven by the society if they themselves get involved in rape cases in police custody. For custodial rape Indian Penal Code amended section 376 IPC under Criminal Law (Amendment) Act, 2013, The other relevant provision is that the insertion of a new Section in Indian Evidence Act, 1872 (Section 114A). This Section lays down that in a prosecution for rape under sub-Section (2) of Section. 376 of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the women alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. When any person dies while in custody of the police, the law requires a mandatory enquiry by the Magistrate into the cause of death under section 176 of Code of Criminal Procedure 1973.

The recent amendment in procedural law through Code of Criminal Procedure (Amendment) Act, 2005 which amended section-176 of Cr.P.C, 1973 and inserted in its sub-section (1), the words " where any person dies while in the custody of the police replaced with a new sub-section, "(1A) where (a) any person dies or disappears, or (b) rape is alleged to have been committed on any women while such person or women is in the custody of police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as case may be, within whose local jurisdiction the offence has been committed."

Besides above mentioned developments it is noteworthy to mention here that a compressive Bill has drafted and introduced in the fourteenth Lok Sabha (Lower House of Parliament) by Shri Mohan Singh, Member of Parliament. The Custodial Crimes (Prevention, Protection And

Compensation) Bill -2006 (Lok Sabha Bill No. 63 Of 2006, 26th July, 2006) seeks to provide prevention and protection against custodial crimes, for compensation in cases of custodial offences, for appointment of vigilance Commissioner and District Vigilance Commissioners for Custodial offences. However, the Bill could not be passed by the Parliament. The Code of Criminal Procedure (Amendment), Act, 2008 was passed by Parliament and which provides custodial safeguards for arrestee persons in police custody. The salient features of the Act are the followings;

1. Curbing the power of arrest

2. Protection of women in custody

3. Victims and Witness Protection

3.2 THE PREVENTION OF TORTURE BILL, 2010

The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 9th December, 1975. India signed the Convention on 14th October, 1997. Ratification of the Convention requires enabling legislation to reflect the definition and punishment for "torture". Although some provisions relating to the matter exist in the Indian Penal Code yet they neither define "torture" as clearly as in Article 1 of the said Convention nor make it a criminal offence as called for by Article 4 of the said Convention. In the circumstances, it is necessary for the ratification of the Convention that domestic laws of our country are brought in conformity with the Convention. This would necessitate either amendment of the existing laws such as Indian Penal Code or bringing in a new legislation. The matter was examined at length in consultation with the Law Commission of India and the then Learned Attorney General of India. After considerable deliberations on the issue, it was decided to bring in stand alone legislation so that the aforesaid Convention can be ratified. The proposed legislation, inter alia, defines the expression "torture", provides for punishment to those involved in the incidents of torture and specifies the time limit for taking cognizance of the offence of torture. Section 3 of the bill defines torture as: Whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes,—

(i) Grievous hurt to any person; or

(ii) (ii) Danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture.

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law. Explanation.— for the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.

3.3 THE PREVENTIONOF TORTURE BILL 2017

The Law Commission of India in its 273rd report has proposed a new anti-torture law, the Prevention of Torture Bill, 2017, which provides a wide definition to torture not confined to physical pain but also includes "inflicting injury, either intentionally or involuntarily, or even an attempt to cause such an injury, which will include physical, mental or psychological".

The Commission has suggested India's ratification of the UN Convention Against Torture. The proposed standalone anti-torture law directly makes the state responsible for any injury inflicted by its agents on citizens. Under it, the state shall not claim immunity from the actions of its officers or agents.

The recommendation of the Commission headed by former Supreme Court judge, Justice B.S. Chauhan, will allow human rights advocates to pressurise the government to recognise torture as a separate crime. So far, neither the Indian Penal Code nor the Code of Criminal Procedure specifically or comprehensively addresses custodial torture.

Though India had signed the UN Convention against Torture in 1997, it is yet to ratify it. Efforts to bring a standalone law against torture had lapsed. The National Human Rights Commission has been urging the government to recognise torture as a separate crime and codify punishment in a separate penal law.

Recently, while hearing a PIL filed by former Union Law Minister Ashwani Kumar, the Supreme Court had described torture as an instrument of "human degradation" used by the state. It was after

the scathing remarks that the government had referred the question of a law on torture to the Law Commission.

The Commission has asked the government to ratify the UN convention to tide over the difficulties faced by the country in extraditing criminals. The draft Bill has recommended punishment for torture ranging from fine to life imprisonment. In case a person in police custody is found with injuries, it would be “presumed that those injuries have been inflicted by the police”.

The Bill proposes to give the courts the scope to decide a justifiable compensation for a victim, taking into consideration his or her social background, extent of injury or mental agony.

CHAPTER 4

CUSTODIAL TORTUREA GROSS VIOLATION OF HUMAN RIGHTS

CHAPTER 4

4. CUSTODIAL TORTUREA GROSS VIOLATION OF HUMAN RIGHTS

Ensuring liberty and upholding dignity of an individual is the paramount concern of every democratic state. Living in this era of globalisation, any incident violating human rights is of pivotal importance to the world at large. Expanding ambit of human rights on one hand and increasing counts of crime rate on other hand, poses a challenge to all law-enforcing machineries to strike a balance between the two.

Human rights and custodial torture are contradictory terms. Torture in custody at the hands of protectors of law i.e. police is considered to be a harshest form of human rights violation. Perseverance of human rights can be guaranteed only by curbing this unnecessary evil. The expression "torture" has neither been defined in the Constitution of India nor in any other penal law. Issue of custodial torture is concern of international community and a universal subject. Thus, custodial forcefulness, suffering and abuse by police authority are not peculiar to this country but a widespread phenomenon[58].

India, being the biggest democracy of the world, embedded in its laws, protection of life and personal liberty[59] as one of the fundamental rights. Still, existence of cases of custodial torture and third degree upon under-trails and suspects is an integral part of investigation. The former Supreme Court judge, V.R. Krishna Iyer, J., has said that custodial torture is worse than terrorism because the authority of the State is behind it.

India is party to almost all the key International Instruments protecting human rights[60].This give rise to question- why such incidents still prevail? This fact portrays a contradictory picture of our country to world at large.

[58] Dayal, Keshav, Custodial Crimes And Human Rights Violation, HUMAN RIGHTS YEAR BOOK,2010, P.80
[59] CONSTITUTION OF INDIA, art. 21.
[60] Jaswal, Paramjit S. And Jaswal, Nishtha, Police Atrocities, Human Rights and Judicial Wisdom, HUMAN RIGHTS YEAR BOOK, 2010 P.208

Thus in this paper, the author aims to look at the various international instruments as well as the efforts incorporated by Indian legislature and judiciary to curb the evil of torture and what more can be done in this context

Case study:

2019 Hyderabad gang rape:

In November 2019, the gang rape and murder of a 26-year old veterinary doctor in Shamshabad, near Hyderabad, Her body was found in Shadnagar on 28 November 2019, the day after she was murdered.

Indian police have shot four men suspected of raping and killing a young female vet in Hydrabad.

CHAPTER -5

TECHNIQUES AND INSTRUMENTS OF TORTURE

CHAPTER -5

5. ASPECTS OF CUSTODIAL VIOLENCE

Based upon the study custodial violence has been classified in to two types Torture and Sexual Harassment and rape.

5.1. Torture

India is a signatory to convention against torture but not hasratified it. Custodial torture is virtually a worldwide phenomenon inflicted upon individuals regardless of sex, age or state of health. This worst form of human rights violation has become a very serious and alarming problem in third world countries like India. In case of terrorists, dacoits and other hardened criminals, police like to take confessions resorting to third degree methods as it is easy. Custodial torture has become so common in these days that not only police and bureaucracy but people also take it as a routine police practice of interrogation. Custodial violence is not defined in any penal law in India. The prevention of Torture Bill 2010 is pending and yet to see the light of the day.In Indian constitution enshrines human rights in Part III of the Constitution of India. Though articles 20, 21 and 22 of the constitution of India provides the basic human rights, there is no specific right against the torture. Hence, the burden has fallen on the Supreme Court to develop a right against torture through a process of interpretation. Court has delivered a number of decisions prohibiting torture. In Nandini Satpaty's case, it was held that not only physical threats or violence but psychological torture, atmospheric pressure, environmental coercion, tiring interrogation methods resorted in the course of interrogation by police are violation of law. In Sunil Batra v Delhi Administration, the court observed that, the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a least would certainly be arbitrary and can be question under Art.14. In the same case court observed that: if the prisoner breaks down because of mental torture, psychic pressure of physical infliction beyond the licit limits or lawful imprisonment the person administration shall be liable for the excess."

5.1.1 Sexual Harassment and Rape

Sexual harassment may start with the verbal abuse and which may lead to rape. Rate of crimes committed against women has increased tremendously. Women are considered to be a weaker sex in male dominated society and she is expected to be, by nature, passive, tolerant and patient. Therefore she has been victimized by her male counterpart and this is being going on for ages. Custodial rape is a rape in the custody of police, jail or in the custody of public servant or in the custody of hostel superintendent, remands officer etc. Women are raped in police custody where they are beaten up or they are threatened relating to their relatives and dear ones that compel the women to give her forced consent. There are many provisions in the Indian Penal Code relating to sexual intercourse by public servant, remand home or by any member of management staff of judicial custody with any women in their custody. Section 376(c), IPC deals with sexual intercourse by superintendent or manager of jail, remand house, hostel, private house etc. In the famous, Mathura Rape case a dalit labourer was raped by a police constable within the police premises while she was in police station along with her brother and a fellow labourer. In aftermath of the Mathura case in 1983 an amendment to the rape law was bought in which among other things increased the minimum punishment in case of custodial rape to 10 years and the onus proof in all cases was shifted to the policemen involved who was innocent under S.114A of the Indian Evidence Act. The same amendment also bought a change in cases of custodial rape if the women states in her evidence before the court that she did not consent. It is for the accused policeman to prove the contrary. The particular manner in which this clause is phrased lead to glaring loopholes. The presumption is not made absolute but is made subject to proving the contrary.

5.2. CLASSIFICATION OF CUSTODIAL CRIMES

Based on gathered data, violations of a custodial sort can be isolated into two classes. This order depends on the sort of guardianship the casualty was taken under when the wrongdoing happened .A. Torture in Police Custody Torture in Police Custody is especially used as a tool to extract applicable information associated with instances and criminals. It is a extensive exercise and outcomes from systematic administrative failure or inefficiency to guarantee detainee's rights. The first 24 hours following detention constitutes highest threat for perpetration of such acts. Police custody is defined because the on the spot bodily custody by way of the police of a person who devoted a crime. The man or woman is arrested and brought to the police station for processing. The man or woman is then confined within the police station's jail. The jail detention is mostly a

short duration because the custody may be revoked whilst the man or woman is produced earlier than the choose in the 24 hours of arrest and was granted bail by means of the choose. The suspect may be interrogated via the police whilst on this form of custody assuming that the suspect is read his rights before definitely sending him to the police station. A lawyer is normally found in an interrogation to assure that the suspect's rights are being reputable and no bodily damage or brutality of any kind will occur. Also, police custody is often the form of custody for suspects with non-bail-in a position offenses. There infrequently any powerful safeguards to make sure that a person taken into custody could have their detention recorded or have spark off get entry to a legal professional.

5.2.1. Cases of Torture in Police Custody

Case 1 – 7thApril, 2010: Mr. VeljiParmar, who was accused Case 1 – 7thApril, 2010: Mr. VeljiParmar, who was accused of theft died due to alleged torture on the Tajada Police Station in Bhavnagar District of Gujarat. The Police claimed that the deceased complained of a chest ache and turned into for that reason taken to a medical institution, wherein he become declared dead. However, Mrs. Manjula, the deceased's wife alleged that her husband succumbed to torture in custody. On further research, the submit mortem report discovered around 37 brutal harm marks at the body.

Case 2 – twenty seventh Oct District of Uttar Pradesh. The deceased become picked up through the Special Operations Group (SOG) on that very day in connection with a robbery case. Police claimed that the deceased dedicated suicide. However the victim's household alleged in any other case and similarly claimed that they had not allowed his loved ones to fulfill the sufferer while his condition deteriorated and had only taken him to the clinic as soon as he turned into already useless in a bid to conceal their crime.

Case 3 – On 13 July 2010, one Sneha Kumar Chakma, son of DirendraChakma of Silkur village in Lunglei district became assaulted by means of an employees of Mizoram Armed Police (MAP) at Demagiri marketplace area in Lunglei district. The victim had come to promote "dry fish" inside the marketplace and changed into reportedly assaulted whilst the victim's wife objected to the MAP personnel who forcibly attempted to cast off dry fish without paying its price.

5.2.2. Cases of Torture in Judicial Custody

Case 1 –twelfth January, 2010: Under-trial prisoner, Mr.Krishna Kumar died because of alleged torture at Bhondsi Jail, Gurgaon in Haryana. The Jail officers claimed that he died because of clinical headaches however research found out harm marks.

Case 2 – March, 2013: Mr Jahangir Khan, an underneath-trial prisoner died beneath mysterious situations in Chas Jail in Bokaro, Jharkhand. The jail government had claimed that Mr Jahangir had tried to set himself on hearth after pouring kerosene from a lamp in his ward, whereupon he became rushed to the closest health center however succumbed to his injuries tomorrow. However, Mr. Khan had previously alleged earlier than media personnel that he became being tortured and an research become launched.

Case 3 –Nandagopal in Annamalai Nagar turned into held by means of four policemen on suspicion of robbery. "After choosing him up on May 30, 1992, the law enforcement officials stored him in custody for 5 days in which he became crushed to dying. The cops also allegedly gang raped his spouse Padmini," the court was told. Judgment "We are surprised the accused were not charged under Section 302 IPC (murder) and as a substitute the courts below treated the dying as suicide. They should had been charged beneath that provision and presented loss of life sentence, as homicide by police in custody in our opinion comes in the class of rarest of rare instances deserving demise sentence," the Bench determined.

5.3 STATISTICS OF CUSTODIAL DEATHS IN INDIA

5.3.1. VIOLATION OF HUMAN RIGHTS

One of the most insidious evils in this modern age is the continued practice of inflecting torture upon individual being amounting to inhuman degrading treatment. The investigative agencies, in their anxiety to follow shortcut and to obtain a confession often resort to inhuman treatment. Victims are forced to do things against their ideological or religious convictions leaving them devoid of self-respect or self-esteem. At times victims are interrogated in terrifying ways and the interrogators used inhuman treatment to elicit false confessions from them. Supreme Court in Prem Shankar v. Delhi administration held that the Punjab Police Rules were violating Arts. 14, 19 and 21 of the Constitution of India and Krishna Iyer, J. delivered the majority judgement that rules providing that every under trial who was accused of a non-bailable offence punishable with more than three imprisonment would be handcuffed is violating the said Articles. It is a practice of

keeping under trails and convicts in correctional homes, which is inhuman and mental torture to inmates. The Supreme Court gave directions to Central and State Governments and Jail Authorities in the case of Sunil Batra v Delhi Administration. In Bhagalpur Blinding case was a glaring example of cruel and inhuman treatment to the prisoners insolating the spirit of constitution and human value as well as Art 21. Supreme Court in this case tackled the blinding of under trail prisoners by the police by piercing their eye balls with needle and pouring acid

in them. This case illustrates key aspects of the pattern of torture, sanction of torture by state and local judicial authorities, the routine concealment of torture, failure to conduct proper

inquiry and the inordinate length of judicial proceedings. Court described the issues involved in this case to be of the greatest constitutional importance as they exploit right to life and

personal liberty. Ten years after the blinding of under trails the court quashed the charge against the victims. There have been some instances where the over enthusiastic police officers physically tortured the accused in their custody, but courts of our country have condemned their inhuman approach in their judgments.

5.3.1.1 Protection of Human Rights Act 1993

The preamble of Human rights Act 1993 was passed by the parliament to meet the national and international demand to have a law to protect human rights and punish violations of the same. Meaning of human rights is provided in Sec.2(1)(d) of the Protection of Human Rights Act. Changing social conditions and emerging trends in the nature of crime and violence called for providing efficient and effective methods for dealing with the situation bringing in transparency and greater accountability. That is perhaps the reason why the Supreme Court has termed the National Commission as a unique expert body.

5.3.1.2 Need for proper implementation

of existing laws As mentioned above there are sufficient laws in India for the protection of Human Rights and to control the Custodial crimes but there is no proper

implementation in those laws that's the reason for the occurrence of custodial violence in India. The laws which are enacted should be strictly implemented. One who violates the law should be punished severely. There is a need for the effective implementation of laws which are enacted by the legislature. Only enactment of laws does not help to prevent the custodial crimes happening in India. Researcher says that only people who are literate are only aware of the rights which are given by the state to them but people who are illiterate are unaware of their rights. There is a need for spreading awareness to the people who are not aware of their rights which are guaranteed by the Constitution of India.

5.4. NEED FOR SPREADING AWARENESS ABOUT THE RIGHTS AGAINST CUSTODIAL VIOLENCE

Researcher says that there is need for spreading awareness about the rights that the citizens of India are having which are guaranteed by the Constitution of India and the rights provided under legislative statutes. In reality in rural or tribal areas people are not even aware what to do once the police arrest them, there are people who even don't know that they should consent an advocate for the advice, this is one of the instance for many custodial deaths. Researcher discuss about the role of media, students, politicians and NGOs in spreading awareness about the rights against the custodial violence.

5.4.1 Role of Media

Researcher says that the media's role is very important in spreading awareness. The impact of media is more on the people as it's attractive and it is the easy way for communicating information to the people. Media should give information in a very frequent basis for the citizens. After the custodial death is taken place the media for a couple of days shows only about the custodial crime on the later basis it will never discuss about the custodial crimes instead of this the media can focus upon the incident when it is in the initial stage. Researcher says that media should also concentrate in spreading awareness about the laws which are enacted by the legislature for the protection of citizens of India. The reason why researcher is saying that the media should focus on the spreading

awareness because people who are illiterate watch news in their vernacular language. So, that it will be easy for them to know about the rights they are having. Recent days we are seeing many advertisements about the government policies for people likewise, it can also advertise about the rights they are having. Researcher finds it as one of the best way to communicate to people.

5.4.2 Role of Students

Researcher says that students should take an active participation in spreading awareness about the rights against custodial violence. Students who are aware about the custodial death taking place in certain areas is more than they should take an initiative and conduct awareness campaigns in their vernacular language. As the students are very creative they can make the postures and by using them they can spread awareness. Students can perform a skit and can make them understand about the situation and how should they react when such incidents take place in their locality.

5.4.3 Role of Legislatures

Researcher says that legislatures can also contribute in spreading awareness about the rights of the citizens. Legislatures conduct campaigns for their political agenda. During the campaign they can include this as a part to make people aware of their rights. Legislatures work for the better society and they are the representatives of large number of people. Legislatures as they represent government so that they can educate the people about the enactments passed by the legislature. By this it will reach to maximum people. It will be one of the best way to bring awareness about the rights of citizens of India.

5.4.4 Role of NGO's

NGO's are the non-profitable organisations. Government should allot some funds for them to conduct awareness campaigns at different places about the rights of citizens and the legislatures enacted by the government for the protection of the citizens of India. In this way also it can reach to maximum people.

Torture does not happen in a vacuum. The social and political context and the supply of tools and techniques for inflicting pain rely on a failure of political will to prohibit and punish the act. If governments had the political will to stop torture they could do so. Manufacturing, trading and promoting equipment which is Used to torture people is a money-making business. The parallel

trade in providing training in the techniques of physical and mental torture can be equally profitable. Companies and individuals around the world are involved in providing devices and expertise which are ostensibly designed for security or crime control purposes, but which in reality lend themselves to serious abuse.[61] This is a thriving global trade involving countries on every continent and it involves governments in every region. Some of the equipment Used for torture has changed little over the years. Leg irons and shackles, for example, are reminiscent of the cruelty and inhumanity of the slave trade. However, modern technologies, such as electroshock devices, are an increasing part of the torturer's armory.

All these devices and weapons, no matter how different they are, have in common the potential to inflict severe pain and injury. There is also lack of official controls on their manufacture and sale.[62] This section on techniques and Instruments of torture looks at the relevant human rights instruments banning techniques and tools Used in torture, ranging from some of the earliest known historical instances of the practice right up to the present time and covering some practices Used throughout the world. It also examines the continuing trade in older tools of torture as well as the growing trade in electroshock technology. It looks at the increasing Use of the so-called 'non-lethal' weapons, such as tear gas and chemical irritants, and how these can facilitate torture. It also shows how the unscrupulous transfer of military and security training and expertise helps train torturers. The different methods of inflicting pam are grouped by type. Torture is being used in the Middle East, China, Guantanamo bay, Afghanistan, Iraq etc. Even in the last few years, such democratic countries as the US, UK etc have constantly used torture in the ongoing war on terror. It is pertinent to mention from the outset that the Use of torture is prevalent and common at the point of arrest and during the detention of suspects. This is usually carried out by the law enforcement officers who have the responsibility to protect life and property. In order to effect an arrest, cohesive methods are Usually resorted to and torture instruments employed to suppress, brutalize, intimidate, and inflict physical and non physical pain and suffering on suspects or perceived law breakers.

5.4.5 Types and Purpose of Torture

[61] ThuliaKali v. State of Tamil Nadu, 1972 Cri. L.J. 1296 and G.B. P. v. State of Maharashtra A.I.R. 1979 S.c. 135.
[62]2 Hasib v. The State of Bihar A.I.R. 1972 S.c. 283.

There are different types, goals and purposes for which torture may be Used by the torturers. Henry Shue categorised them into three types which are mentioned and explained below.

5.4.6 Deterrent torture

The goal of deterrent torture is to intimidate people other than the victim. This type of torture is inflicted to intimidate and deter potential or actual opponents from expressing opposition or dissent. The duration and intensity of the physical pain or psychological distress inflicted is determined by the torturer without reference to the responses of the victim.[63] The essence of using this type of torture is the likely impact of the news of the torture on those whom the torturer is aiming to discourage.

The victim has no possible act of compliance available that could lessen or end the torture, because the torturer seeks a response from people to be discouraged other than the victim. Torture inflicted on political dissidents by the South African security police during apartheid serves as an example since its primary purpose was to suppress and intimidate opposition rather than to interrogate.

5.4.7 Interrogational torture

This type of torture is inflicted for the purpose of eliciting information. It is the response of the victim that the torturer seeks. In theory, this type of torture satisfies what Shue refers to as 'the constraint of possible compliance'. The victim may bring the torture to an end by providing the information that the torturer seeks to ascertain. However, in practice, the victim could offer false information just for the torturer to stop the torture. In this regard, the essence of torture is defeated because the information offered is usually false. Sometimes, a hint that torture would be applied can disorganize the victim. Assuming the victim is in possession of the information, and intends to tell the truth, the hint that torture would be applied troubles the victim's mind, and makes him/her jittery and unable to recall or convey the information. In such cases, the constraint of possible compliance simply evaporates.

[63]Government oflndia. Vohra Committee Report (Deihi. 1995).

5.4.8 Sadistic torture

A third purpose for which torture is inflicted is to gratify the torturer's sadism. The torturer's pleasure is derived not only from the torment that the victim experiences, but also from his experience of unfettered domination. The torturer has no incentive to limit the duration and intensity of the pain. Indeed, the greater the victim's suffering, the more pleasure the torturer is likely to derive. Typical examples are the practices in Abu Ghraib prison. The absence of shame and the presence of glee on the faces of the Abu Ghraib guards in the photographs taken of them standing over prisoners with women's underwear over their heads, or piled in pyramids, or cringing in subjection, clearly indicate that the guards derived considerable entertainment from torturing their victims. in a sense, all torture is dehumanizing. In the words of Tindale, "dehumanizing torture is not intended to deter people other than its victims, but rather to break the resistance of its victims and to make them docile.

5.4.9 Aims of Torture

The Use of torture is abhorrent because it inflicts suffering and pain to its victims. David Luban identified five major aims of torture. They are specified and explained below.

5.4.10 Victor's pleasure

One of the motivating factors in embarking on torture is military victory. The victor captures the enemy and tortures him/her. An example of this is narrated by Luban: "I recently saw some spectacular Mayan murals depicting defeated enemies from a rival city-state having their fingernails torn out before being executed in a ritual reenactment of the battle." Underneath whatever significance that attaches to torturing the vanquished, the victor tortures captives for the simplest of motives: to relive the victory, to demonstrate the absoluteness of his/her mastery, to rub the loser's face in it, and to humiliate the loser by making him/her scream and beg. Liberals abhor torture but strongly believe in active human beings possessing an inherent dignity regardless of their social station. The victim of torture is in every respect the opposite of this vision. The torture victim is isolated and reduced instead of being engaged, terrified instead of being active, and humiliated instead of being dignified.

5.4.11 Terror

Torture can be used for the purpose of terrorizing people into submission; however, dictators from Hitler, Pinochet to Saddam Hussein tortured their political prisoners so that their enemies, knowing that they might face a fate far worse than death, would be afraid to oppose them. Terror is a force-magnifier that permits a relatively small number of police to subdue a far larger population than they could if the would-be rebels were confident that they would be treated humanely upon capture. But of course, a practice that exists to make it easier to subdue and tyrannize people is fundamentally hostile to the rule of law of liberal democratic societies.[64]

5.4.12 Punishment

History has revealed that until the last two centuries, torture was used as a form of criminal punishment. Beccaria condemns punishments that are more cruel than is absolutely necessary to deter crime, arguing on classical-liberal grounds that people in the state of nature will surrender only the smallest quantum of liberty necessary to secure society. The aggregate of these smallest possible portions of individual liberty constitutes the right to punish; everything beyond that is an abuse and not justice, a fact but scarcely a right. Beccaria makes it clear that torture would turn society into a herd of slaves who constantly exchange timid cruelties with one another. Such punishments, he adds, would also be contrary to justice and to the nature of the social contract itself, presumably because turning society into a herd of slaves undermines the liberal understanding of the ends of society. With the growth of liberal democracy, the ideology of popular sovereignty deflated the purpose of punitive torture. If the people rule, then the responsibility of torture would fall on the people and the need for a spectacle of suffering by which the people could impress themselves seemed pointless.

5.4.13 Techniques and Instruments of Torture

The word instrument may mean different things. However, an instrument in this context, means, what Article 1 of CAT describes as "any act by which severe pain or suffering, whether physical

[64] For instance. to a human rights activist or a lawyer. instruments connotes the various treaties and convections and protocols enacted by variolls national and international bodies. Whereas. to an automobile mechanic. it means tools with which he carries on his mechanical jobs. such as spanners, screw drivers etc. To a torturer, it means whatever objects; tools. devises, apparatus. equipment, weapons. chemical, gas and even invisible substances. Provided if employed, it will cause pains and sufferings, whether physical or non physical pains.

or mental, is intentionally inflicted on a person as obtaining from him or a third person information or a confession .... " The operative words are 'any act'. Provided the act employed will result in pain and suffering, it could definitely qualify as torture by virtue of Article 1 of CAT.[65] Consequently, it is right to say that anything that discomforts or harms would qualify as an instrument of torture. As the president of Nova Product said, almost anything can be used to inflict pain, including 'fists and feet'. The point must be made from the outset that pain and suffering could be physical or mental. Usually, physical pain and suffering would leave behind scars and marks from the injuries sustained. But in situation where mental pain and suffering is experienced, no visible scars or marks are left.[66] Only the victim who has been inflicted with mental pain knows where the shoe pinches. However, it must be mentioned that the consequences of torture reach far beyond the immediate pain. Many victims suffer from posttraumatic stress disorder, which includes symptoms such as flashbacks, severe anxiety, insomnia, nightmares, depression and memory lapses. Towards this end, states have been enjoined to prohibit and prevent the Use and production of any torture instrument. Consequently, Article 14 of the Roben Island Guidelines provides that: "states should prohibit and prevent the Use, production and trade of equipment or substances designed to inflict torture or ill-treatment and the abuse of any other equipment or substance to these ends." The prohibition on torture and other cruel, inhuman or degrading treatment or punishment extends to all circumstances, even during the time of war. The right to freedom from torture is absolute and it cannot be restricted. Torture is always, in every situation, unacceptable and no reason can be canvassed to justify the Use of torture. 13 Articles 5 of the UN Code for Law Enforcement Officials contains an absolute prohibition of torture and ill-treatment. The official commentary to Article 5 states that the term cruel, inhuman or degrading treatment or punishment "should be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental." In addition, Article 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials states that "Law enforcement officials in carrying out their duty, shall, as far as possible, apply nonviolent means before resorting to the Use of force and firearms." It stipulates that "whenever the lawful Use of force and firearms is unavoidable, law enforcement officials shall minimize damage and injury, and respect and preserve human life.

[65]Alan Donagan, The Right Not to Incriminate Oneselt: I Social Philosophy & Policy (1984),

[66] Sharma. S.K.: "Right to Speedy Trial: An Imperative Process Ural Piece of Criminal Justice." The Commercial La" Gazette (April 10. 1980) 15.

5.4.14 Modern instruments of Torture and Technique

All over the world, law enforcement agencies and security services Use equipment that ranges from the simplest technology such as batons and sticks, handcuffs, tear gas, water cannon and 'stun-guns' to control crowds and restrain people alleged to have broken the law or to be posing an imminent threat to others. However, most of these equipment which are ostensibly designed for purposes of security and crime control are regularly being abused and sometimes employed to violate fundamental rights not to be subjected to torture and ill-treatment. 14 While methods of torture are often quite crude, a number of new technologies of control have been Used by torturers in recent years. For example, in South American countries, the US has introduced new, more sophisticated apparatUs since torture 'equipment' in these countries was considered to be extremely primitive or outdated.

5.4.14 Deployment of shocking practices and techniques

US government officials have commended the interrogation techniques being Used in the interrogation of detainees in Iraq and other detention centers. One of the An American interrogator has given impetus to techniques as something worth applying In the circumstance. The interrogator stated: "Well hypothermia was a widespread technique. I haven't heard a lot of people talking about that, and I never saw anything in writing prohibiting it or making it illegal. But almost everyone was using it when they had a chance, when the weather permitted ... That was a pretty common technique." Furthermore, he also cited as an example how the people were being beaten and burnt by the army and when the units would go out into people's homes to raid; other soldiers usually stayed in the house and tortured the victims.

5.4.16 Electric-shock devices

Electric torture is one of the most violent weapons Used by torturers. The advantage of electricity is that, unlike flesh-and blood, the electro shock machine is indefatigable; electric shocks can be applied to the most intimate bodily parts genitals, breasts, and lips, ear lobes resulting into both mental and physical injuries. The efficiency of electro-shock devices have been attested to by the torturers. These instruments are regularly used because "The main thing is not to leave any marks.

It is efficient and gives us pleasure." The electric torture industry has registered a variety of devices: electrodes, introduced in teeth cavities or other orifices; the electro-shock machine; electric truncheons inserted in the mouth or the anus; electrified shields and handcuffs; electric cables, etc. The device considered to be most perverse and dubbed Apollo was Used in Iran; it sends electric shocks to the victims whose heads are covered with steel helmets so that their screams could be amplified. The terms Used for torture instruments demonstrate the ritualistic humanization of the objects, as if they were relatives or friends of the torturer. Cruelty could be without limits. For instance, an Argentinean doctor, nicknamed Mengele, was rather adept at Using a teaspoon in an abominable manner: he would insert it into the wombs of pregnant detainees up to the point where the fetuses were reached; he would then connect the teaspoon to power and send electric shocks to his victims.

needed to obtain information that could save lives or prevent fresh terrorist attacks. To this end, the claim by the former detainees that interrogators Used unspecified drugs; tablets that made them senseless is sustainable. The shortcoming of the administration of the truth serum is that the sodium pentothal does not force the subject to tell the truth. Rather they make the subject more talkative. Information elicited through this process is not likely to be accurate. If this is so, why then its Use should continue since the result it seeks to uncover will not materialize? What about the subsequent effect on the victim?

Experimenting with truth serum could result into the death of the subject. This alone is a potential argument to ban the Use of truth serum and other related drugs.

5.4.17 Prison as instrument of torture

Clearly, prison is a form of torture; it seeks to place the whole of the person his/her body and soul in complete submission. It is no mistake that the inmates of such prisons are often referred to as creeps, scum and animals. The process is just as dehumanizing as are the better known forms of physical torture.

Indeed, prisoners are subjected to precarious conditions by not knowing when or whether they will be released, since the decisions of parole boards are just as capricious as those of sentencing judges. This situation is even worse for those under arbitrary arrest and detention. It is trite that convicts are put in prison because they have been found guilty of a crime. They cannot be released until it is clear that they have 'paid for their crime'. Today this is often measured in terms of the duration of suffering which is analogous to the process of torture. In the primitive period, it was quite common for those tortured to be released at the end of the drawn out process of torture, provided that they confessed. This is not applicable to convicts.

5.4.18 The sentence must be served except if there is amnesty?

Expanding Methods of Torture and Torture Equipment Methods of torture have expanded as the trade in torture equipment becomes more globalized. In some cases, torture is now more high-tech with the manufacture, export and Use of devices designed specifically for Use on human beings. The Use of these devices by the torturer on the victim may result in physical or mental pains. Explanations on physical and psychological torture are discussed below.

5.4.19 Physical torture

The instrument of torture and the techniques often employed have been highlighted above. It is equally important to examine various methods of torture as observed by some adjudicating bodies in their decisions. Torture takes many forms because men/women have applied their ingenuity assiduously and creatively to that end. Simple beating with fists or boots is the most favored form of torture. Sometimes various implements such as bags or plastic tubes filled with sand, and whips are used. Indeed, with the additional possibilities made available through modern technology, forms of torture are almost unlimited. Certain methods of interrogation may constitute torture and inhuman treatment. For example, the European Commission said that "where a person being interrogated is slapped on his ears, beaten on his chest and stomach, and then kicked, such treatment would be inhuman." Similarly, the Constitutional Court of Australia said that "To keep a suspect chained during his interrogation would also constitute inhuman treatment." In the same vein, the rape of a detainee by an official of the state is an especially grave and abhorrent form of ill-treatment, particularly given the ease with which the offender can exploit the vulnerability and

weakened resistance of his/her victim. In the Ireland case[67] , Frowein is of the opinion that The European Commission of Human Rights viewed the so-called five techniques as torture. It has also been observed that in most cases, the persons concerned alleged various physical assaults by police officers. In a number of cases, the allegations made were supported by medical evidence. In order to sustain an allegation of infliction of torture; medical examination is Usually resorted to because it would reveal infliction of torture even if no traces of physical marks were found. However, the Court has held that even if the complainant is unable to prove allegation of torture vide medical evidence, other forms of ill-treatment can be sustained if proved.

5.4.20 Psychological torture

The inclusion of psychological torture recognizes that many of the most barbaric and damaging forms of tortures are psychological. Psychological torture includes mock executions, hearing or seeing others being tortured or executed, deprivation of food, water, or sleep, and prolonged isolation or prolonged stays in darkness, physical abuse, intimidation, humiliation, and threats to family and friends were all forms of torture. CAT puts particular emphasis on mental torture. The characteristics of psychological torture requires that it must be prolonged and arise from one of three situations: the infliction or threatened infliction of severe pain; the administration of mind-altering substances or procedures; and the threat of imminent death, or the threat that another person will imminently be subjected to death, severe pain or suffering, or the administration of mind-altering substances. These restrictions, as stated, encompass virtually all claims to mental or psychological torture. Other instances of blissfully sublimating torture and effects were the Use of towels, scarves and clothes for blindfolds which caused mental breakdown. The litany of the humiliations and degradations inflicted by American soldiers in Iraq, Afghanistan, and Guantanamo Bay is literally mind boggling: building naked human pyramids, staging menstruation, forcing detainees to masturbate, service women fondling themselves in the presence of detainees, forcing the detainees to walk while leashed to a chain as if they were dogs, and mishandling of the Koran. While Mr. By bee and others in the Bush Administration may argue that the above actions did not cause physical pain, it is contended that the mental pain and suffering inflicted is no less severe than physical pain for all are tantamount to profound violations of Islamic

[67] *Irelund* v. *United Kingdom*, European Commission, (1976) 19 Yearbook 82.

belief. Even if the pain and suffering were mental rather than physical, they constitute torture because of their severity and therefore fall under the definitions of torture.

5.5 JUSTIFICATION FOR TORTURE

Torture is morally a wrongful and illegal act. But sometimes we feel justified in doing what we know is wrong because the stakes are high. So the next question is: is torture so wrong that it is inexcusable no matter how high the stakes are? It is contended that all actual arrangements for torture are inexcusable, in spite of the fact that we can imagine hypothetical cases, like the notorious ticking-bomb cases in which it seems excusable. Torture, in any form, is abhorrent and universally outlawed. To this end, no cogent reason can be adduced to justify the Use of torture by security agents and law enforcement officers. William. F. Shuitz, has warned: "For a society to start providing its imprimatur to criminal acts because they are common or may appear to provide a shortcut to admirable ends is an invitation to chaos; that the first thing wrong with the act of torture is that it is universally condemned and inherently abhorrent.... Under international law, torturers are considered enemies of all humanity, and that is why all countries have jurisdiction to prosecute them, regardless of where the torture took place." In order to consider reasons not to torture it is appropriate to address the argument which is Usually advanced as the most cogent justification for torture the 'ticking time bomb' argument.26 This thesis supposes that a bomb primed to explode within a short time has been hidden in a city centre and that, unless its whereabouts are discovered, there will be massive loss of life when it explodes. The person responsible for planting the bomb has been arrested but refuses to disclose its whereabouts. Under these circumstances, it is argued that it is justifiable to torture that person to force him or her to give the necessary information because failure to do so renders the authorities co-responsible for any deaths arising out of the explosion. In this situation, torture is justified on the ground that when faced with an imminent threat by a terrorist, almost any method is justified, even torture. Other countries also have allowed the Use of torture or interrogation methods that harm the suspect, in order to stop a 'ticking bomb.' One example of this occurred in the Philippines in 1994-1995 when the authorities received information that Ramzi Yousef, one of the masterminds of the 1993 World Trade Center bombing, planned to blow up a dozen jumbo jets over the Pacific Ocean. The Philippine authorities were able to foil the plan after they tortured a suspected terrorist for sixty-seven days. Therefore, in that instance, torture successfully stopped a 'ticking bomb'. The question

is whether the officials responsible for discovering the location of the bomb released them were committing a crime by torturing the person who had planted the bomb. If so, how are they to be dealt with subsequently by the criminal justice system? Alternatively, is torture to be legalized? For instance, in Nepal, torture as a means of punishment is widely justified because the Use of illegal force purportedly for solving crimes is looked on with favour not only by the officials but also by the victims of crime.

Victims expect the police to deliver quick justice and urge that the offender be given summary punishment. In this regard, it could be argued that torture is and always has been a factor not of brute sadism but of the willingness to view one's enemies as something less than human. Under such a circumstance torture appears to be favourable due to the convenience it may seem to provide28 The assimilation of human rights violations in several realms of a society, therefore, is not acceptable by states or political forces; the justification often needs to be repackaged as something reasonable and humane; perhaps even heroic. Thus, the metaphor of a ticking time bomb is essentially used to describe a situation where the extraction of information from a captive by any means could possibly save the lives of many, on the ground that the war against terrorism is a new kind of war, hence justifying physical or psychological pressure, i.e. torture. Yet after extensive torture, none of the hooded detainees were charged with any crime. Sadly, Andre Rosenthal once said concerning Israel: "No enlightened nation would agree that hundreds of people should lose their lives because of a rule saying torture is forbidden." Consequently, whenever the issue of violent interrogation has come up in Israel, people of practical wisdom maintain that the Use of force is necessary to extract information about terrorist activities that will in the end save the lives of many potential victims. Similarly, Rosenthal fulminated: "That is the most immoral and extreme position I have heard in my life ... thousand people are about to be killed and ... we don't do anything .... when you have someone in custody who may be able to tell you the whereabouts of a bomb that is ticking toward the loss of many innocent lives, it is the moral obligation of the state to do anything necessary to make him speak." Thus, it has been contended that Israel has the right and obligation to defend its citizens. It is a 'defensive democracy' reacting to attacks. This reasoning holds not only for Israel but for other democratic countries that now face the same situation. Barak sees no difference between the prolonged Israeli occupation, torture of the Palestinians and the situation of Western democracies. It has also been observed that the Use of torture can also be justified on the ground of national policy. The example of how the US

soldiers tortured one Ali Abbas in Abu Ghraib prison in Iraq confirms this: "We will take you to Guantanamo ... our aim is to put you in hell so you'll tell the truth.3o These are our orders ... to turn your life into hell .... " Torture was also institutionalized by the US in Abu Ghraib prison in Iraq. The revelations were appalling: a laundry list of harsher techniques in interrogation to include specific Use of dogs and muzzled dogs were Used in order to dehumanise the prisoners. It has also been reported that governments Use fear as a method of torture and justify same on the ground that their power and privileges means it will not happen to them. Torture, in this sense, becomes an abuse of power. Governments continue to allow torture and ill-treatment to go on, often turning a blind eye or using it to hold on to power. It must be stressed that there can be no justification for torture because CAT and other important international human rights instruments assume increasing importance as a tool which has realistic prospects for eliminating torture as a state policy.31 It must also be stressed that if arrested persons have been brought under control, there can be no justification for them being struck or tortured by law enforcement agents. It is also clear that coercive force has no legitimate place in the interrogation room and so there is no defensible reason for officers having in their possession or using a device designed to inflict torture. Nor is the presence and Use of equipment designed to suspend or strap down a suspect during an interrogation appropriate. Such physical ill-treatment can scarcely be interpreted in terms other than torture.

5.5.1 Effects of Torture

The effects of torture are complex. Although wounds, bruises and broken bones heal over time, the deeper psychological trauma often lasts for a lifetime. Some of the most common symptoms of mental torture are: anxiety, depression, insomnia, nightmares, memory difficulties, social withdrawal, irritability, feelings of helplessness, affective numbing, flashbacks, shame, mistrust, ruminations, unexplained pain, the feeling of being permanently injured and changed, many medical complaints, and digestive and sexual difficulties.[68]All these, especially the feeling of being

[68] Human rights are universal legal guarantees which protect individuals and groups against actions and omissions that interfere with fundamental frecdoms, entitlements and human dignity. The full spcctrum of human rights involve the respect for, and protection and fulfillment of; civil, cultural, economic, political and social rights, as well as the right to development. Human rights are universal, which means that they belong inherently to all human beings, as well as inter-dependent and indivisible. the Vienna Declaration and Plan of Action (Vienna World Conference on Iluman Rights 1993); the Universal Declaration on Human Rights, adopted under General Assembly resolution 217(111) (1948), Article 2; and the Charter of the United Nations, Article SS(c).

permanently changed, are part of the contemporary torture's objective to destroy the victim's humanity through a systemic infliction of severe pain and extreme psychological humiliation. According to Amnesty International's medical groups, three things were discovered after collecting and analyzing the findings of twenty five years of works with survivors of torture. The finding showed that: "Firstly, torture continued to persecute the survivors many years later with its physical and mental sequel. Secondly, in modern times it is not aimed primarily at the extraction of information, its real aim is to break down the victim's personality and identity.

Thirdly, torture is aimed at strong personalities, people who have stood up against repressive regimes. Breaking down these persons effectively cows the rest of the community into silence." Similarly, survivors of torture frequently have difficulties in trusting themselves and others and in building relationships. Survivors usually experienced disempowerment and disconnection from others which are expressed through depression, fear, feelings of isolation and powerlessness. Thus torture affects not only the individuals, but the family and the entire community.

5.5.2 Commercial Trade in Torture Equipment

The international commercial trade in torture equipment is thriving. Manufacturers and makers of law enforcement equipment are deriving commercial benefit from the sales of their equipment as a result of patronage from countries that turn the equipment into instruments of torture. An Amnesty International report indicates that there have been numerous examples of US products being Used by torturers overseas, as well as in the US. Similarly, the handcuffs used to suspend detainees from an electricity pylon where they were doused with water and given electric shocks were clearly marked 'The Peerless Handcuff Co. Springfield, Mass. Made in USA'. The company maintained that they usually sell their products to legitimate law enforcement authorities who are not known torturers. However, it must be mentioned that these were mere denials as there was no independent body to investigate and verify the veracity of the defense put up by the company.

5.5.3 Torture skills

It must be mentioned that torturers are not usually nurtured, trained and supported. In many countries they rely on the willingness of foreign governments to provide not only equipment but also personnel, training and know-how.

Combating torture must involve not only stopping the trade in equipment, but also putting an end to the trade which helps create ‘professional torturers’. An Amnesty International report indicates that the US, China, France, Russia, and the UK are among the main providers of training worldwide to the military, security and police forces of foreign states. Some of this training may have the potential to benefit recipient communities by providing better skilled military, security and police forces, who respect the rule of law and seek to promote and protect the rights of the civilian population. However, unless such training is stringently controlled and independently monitored, there is a danger that it will be used to facilitate human rights violations. However, unfortunately much of this training occurs in secret so that the public and legislatures of the countries involved rarely discover who is being trained, what skills are being transferred, and who is doing the training. Both recipient and donor states often go to great lengths to conceal the transfer of expertise which is used to facilitate serious human rights violations.

CHAPTER – 6

CONCLUSION AND SUGGESTIONS

CHAPTER – 6

6. CONCLUSION AND SUGGESTIONS

The majority of countries in the world have made a formal commitment to the eradication of torture. The Convention against Torture currently obliges 136 State parties to prevent, repress, punish and compensate acts of torture committed within their jurisdiction. Many other international instruments and the national laws of a majority of nations have the provisions relating to prohibition against torture. The International Law prohibition against torture is expressly non derogable even in times of public emergency.

Despite these prohibitions, the published reports of bodies such as the UN Committee against Torture, the UN Special Rapporteur on Torture, the European Committee for the Prevention of Torture, the Inter-American Commission on Human Rights, the International Committee of the Red Cross, Amnesty International and Human Rights Watch amply confirm that torture remains a reality in all parts of the world.

This study has sought to answer some important questions. The first question is in what ways there has existed a gap between law on torture – particularly the international norms relating to prohibition-and State practice regarding torture. The second issue addressed is the liability of State to protect the victims of torture and the role played by various Government instruments viz. Judiciary, NHRC and Non-Government Organizations (NGOs) etc.

The Vedas, the material religious works of the ancient Hindus, that offer guidance, inter alia, on religious and social obligations constituted the base on which the Hindu law was built.

The philosophy of human rights in the world over has today proved to be dynamic and in continuum transformation. The challenge is to achieve the appropriate balance between, the need to maintain the integrity on the one hand and credibility of the human rights tradition, on the other hand.

According to Justice V.N. Venkatachaliah, the ‘Human Rights’ philosophy is the ‘quest for translating the International standards of human rights from phrase to action’.

The incorporation of a bill of rights in written Constitution is to incorporate the Human Rights regime into the municipal law and make them justifiable and enforceable. If it is so incorporated in the Constitution, Human Rights transforms themselves into enforceable rights. India has made sincere efforts for the protection and promotion of Human Rights and is the greatest champion of the Human Rights.

Police is one of the means by which State seeks to meet its obligations to protect 'Fundamental Human Rights' i.e. right to life, liberty and security of persons, right to fair trial and equal protection of law. The term 'police' is defined as the civil force of a State, responsible for maintaining public order. The Willink Commission on Police Reforms constituted by the Government of United Kingdom described the term police as, 'the police in this country are the instrument for enforcing the rule of law, they are the means by which civilized society maintains orders, which people may live safely in their homes and go freely about their lawful business. Basically, their task is the maintenance of the Queen's Peace – that is the preservation of law and order. Without this, there would be anarchy.' Sutherland is of the opinion that police refers primarily to agents of State whose function is the maintenance of law and order and especially the enforcement of regular Criminal Code.

The Police Act of 1861 was the first endeavor to introduce a law enforcing agency with a uniform structure in the greater part of India. The police system created by the Act of 1861 has been retained in the independent India.

Unlawful policing only results in suppression of 'Human Rights'. It is of ten witnessed as paradox that human rights are protected by law and are often at risk at the hands of enforcers of law. Police atrocities are a common feature of Indian scenario.

Some of the common features of violations of human rights are the torture of arrested persons, the disappearances of suspects who ought to have been in regular police custody, deaths in false encounters and at police stations and undertrials detained in jails for years without trials. Custodial Violence is common in the spheres of crime investigation to extract information/confession about crime and to recover property. It also occurs in maintenance of law and order situations particularly while dealing with political violence like terrorism, extremism etc.

Torture is generally defined as an instrument to impose the will of strong over the weak by suffering. As described by Adriana P. Bartow, "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".

In India, where the majority people are illiterate, ignorant and poor, they are likely to be more prone to inhuman treatment and exploitations. Many factors can be attributed to the courses of the human rights violations in police custody such as, familial, social, economic traditions, political etc. Inadequate and improper training of police personnel, corruption, lack of human rights awareness, non-use and non-availability of scientific means of investigation and interrogation, absence of effective system of collection of evidence, lack of necessary infrastructure in police stations, work load of police personnel, understaffing in the police stations, insufficient judicial vigilance and other supervisory mechanism, delay in criminal justice system etc. have also contributed to the infliction of torture by the police on persons in their custody. Torture may result in the following forms; giving electric shocks, brutal use of lathis/pattas, burning of fingers, limbs with flames, threshing private organs, denying food, water for days, raping or assaulting the accused, ignoring medical aid.

Torture is banned as a matter of customary international law and this prohibition is enshrined in a number of international legal instruments and by a variety of international and regional Courts and institutions. The prohibition of torture is also considered to carry a special status in general international law, that of jus cogens, which is a 'peremptory norm' of general international law. General International law is binding on all States, even if they have not ratified a particular treaty. Rules of jus cogens cannot be contradicted by treaty law or by other rules of international law. The prohibition of torture is found in Article 5 of the Universal Declaration of Human Rights (1948) and a number of international and regional human rights treaties. These include, the International Covenant on Civil and Political Rights (1966), the European Convention on Human Rights (1950) the American Convention of Human Rights (1978) and the African Charter on Human and People's Rights (1981). The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the European Convention for the Prevention of

Torture and Inhuman and Degrading Treatment or Punishment (1987) and the Inter American Convention to Prevent and Punish Torture (1985) have drawn up specifically to combat torture.

The absolute prohibition of torture is underlined by its non-derogable status in human rights law. There are no circumstances in which States can set aside or restrict this obligation, even in times of war or other emergency threatening the life of the nation, which may justify the suspension of limitation of some other rights.

An order from a superior officer or a public authority may not be invoked as a justification for torture. States are also required to ensure that all acts of torture are offences under their Criminal Law, establish criminal justification over such acts, investigate all such acts and hold those responsible for committing them to account. Torture is also considered to be a crime against humanity when the acts are perpetrated as part of a widespread or systematic attack against civilian population, whether or not they are committed in the course of an armed conflict. As provided by Article 3 of the Geneva Convention and various provisions of the Geneva Conventions and the Additional Protocols of 1977 banned torture in humanitarian law. Article 7 of the Rome Statute of the International Criminal Court included torture and rape within the Court's jurisdiction.

The Convention against Torture prohibited the forcible return or extradition of a person to another country where he or she is at risk of torture. Statements made as a result of torture may not be invoked in evidence except the alleged torture. Victims of torture have a right to redress and adequate compensation. At the international level, a significant effort has been made to combat the practice of torture in all its forms.

Much before India signed and ratified the international instruments and became party to various UN Declarations, the concept of prohibition of torture, especially when committed by the law enforcement officers, had been in India as early as 1860 when the Indian Penal Code was enacted. Sections 330 and 331 of this Code expressly prohibited acts of torture, cruel, inhuman or degrading treatment by the police or other law enforcement officers as an offence punishable with the imposition of penalties. Section 163 of Code of Criminal Procedure, 1973 and Police Act of 1861 prescribed various tasks to be fulfilled by the law enforcement agencies, which can be used as tools to prevent custodial violence. Indian Evidence Act of 1872 also prohibited custodial violence or torture under Sections 24, 25 and 26.

Custodial torture causing physical or mental harm, to the accused person or suspect directly affects his fundamental right of freedom and is also a gross violation of Article 21 of the Indian Constitution. The Supreme Court through a number of landmark decisions, upheld protection of life and personal liberty, protections against inhumane treatment, prison torture and police atrocities. But in spite of all these efforts to combat torture, custodial torture still constitutes a chronic reality.

When the inmates in the custody happen to be women, they are subjected to torture and ill treatment. The provisions under the Indian legal system relating to arrest and detention of women are in routine violated by police personnel. Article 15 (3) of the Indian Constitution permitted the State to make special provision for women, in order to safeguard them and to protect their interest. The Criminal Procedure Code, 1973 provided for a number of checks to curb the police atrocities on women. Indian Penal Code, 1860 was amended to provide deterrent punishment in such cases. But the practice is always otherwise. The policemen did not spare even minor girls from torture as is evident by the Mathura Rape case. The Government set up a National Expert Committee on Women Prisoners in 1986 under the chairmanship of Justice V.R. Krishna Iyer. The Committee reported various methods of torture met out to the women in which women police also participated.

On 26 April 2010, the Prevention of Torture Bill, 2010 was introduced in the Lok Sabha to allow India to ratify the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Bill contains only three operative paragraphs relating to (i) Definition of torture, (ii) Punishment for torture, (iii) Limitation for cognizance of offence. It excludes many of the key provisions of the United Nations Convention against Torture. Under the proposed torture bill there is no separate provision relating to torture of women and children under custody. Section 3 of the Bill defines torture as: whoever being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purpose to obtain from him or a third person such information or confession which causes:

(i) grievous hurt to any person or

(ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture.

Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.

The US Senate ratified the Convention against Torture in 1994, but applied a number of reservations, declarations and understandings to the Convention. US firstly attached declaration that the Convention is not self-executing; it means domestic legislation to be implemented. The justification given by the US authorities was that the US had already sufficient legislation to prohibit torture. The Committee against Torture stated that US domestic legislation is not effective in implementing Convention against Torture. In 2002, the Bush Administration narrowly interpreted the definition of torture mentioned in Convention against Torture, so that, only those acts that were equivalent to intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death would count as torture-a far more restrictive, standard that what the Committee against Torture has set up in its own interpretations. Additionally, by defining torture so strictly and limiting the scope of inhuman and degrading treatment under Article 16 to only the protections offered by the US Constitution, the US narrowed the scope of where and to whom the Convention against Torture prohibition applied. For example, it is a contested issue to whether Convention against Torture applies outside US territorial jurisdiction to military bases and other such sites.

The International Covenant on Civil and Political Rights has been ratified by the United Kingdom but not incorporated into English Law. The European Convention has been incorporated into United Kingdom Law by the Human Rights Act 1998 and the provisions of the Convention against Torture have been incorporated by Section 134 of Criminal Justice Act, 1988. Section 134 of Criminal Justice Act of 1988 criminalized acts of torture and conferred exceptional extraterritorial jurisdiction on United Kingdom courts to hear such cases. However this provision, by itself, is not sufficient to guarantee successful prosecutions. Competent and properly resource mechanisms for the investigation and prosecution of international crimes is crucial. The United Kingdom introduced a scheme of Criminal Injuries Compensation. Under this scheme applications may be made to the Criminal Injuries Compensation Board for an ex gratia payment of compensation where the applicant sustained personal injuries. Compensation is assessed on the basis of Common

Law damages but loss of earnings is limited to twice the average of industrial earnings and there is no element of exemplary or punitive damages.

In Canada, foreigners and the refugees enjoy an extensive protection of their rights. The Supreme Court of Canada ruled that the Canadian Charter applies to everyone and Canada expanded the refugee definition to protect those facing threats of torture. In Canada Compensation program was first initiated in Ontario in 1967 under the Law Enforcement Compensation Act. It was re-enacted in 1971 and further amended in 1973.

Ontario program granted compensation both for injuries and death resulting from crimes of violence.

The Judiciary, Human Rights Commissions and NGOs have played a significant role to protect the victims of torture. The Bhagalpur Blindings episode, the Mathura Rape episode, the indefinite prisonization of under trials episode and many other such incidents exposed the seamy side of our criminal justice system. All these episodes involved abuse by custodial power. A study of the landmark decision of the Supreme Court and various High Courts reveal that Indian Judiciary has made a tremendous achievement in protecting custodial human rights and in facilitating effective reliefs to the victims of custodial violence and their relatives. On the other hand Indian Criminal Justice system comprising of police very often violates the custodial rights, the judiciary tries to protect and promote human rights. It means our criminal justice system has a double face, one hurts and the other tries to heal.

Considering the increasing violence and to protect the victims the parliament has passed Human Rights Act of 1993. This Act empowers the Central Government to constitute National Human Rights Commission, State Human Rights Commissions and Human Rights Courts.

In the efforts to protect the victims of custodial torture, one of the first instructions issued by NHRC on 14 December 1993, required all State Governments and Union territory administrations to ask that reports be sent by the District Magistrates and Superintendents of Police to the Commission within twenty four hours of any occurrence of custodial death or rape and the failure to send such reports could lead to presumption by the Commission that an effort was being made to suppress the facts. It was due to the efforts of NHRC, that Government had included a statement in its

Common Minimum Program that 'the United Nations Conventions against Torture will be adopted.

According to NHRC whenever human dignity is wounded, 'flag of humanity on each occasion must fly half must.' NHRC itself on the other hand felt that the provisions of the Act are not adequate for the better protection of human rights. The major factor about the ineffectiveness of the Commission is that it has no power to enforce its own decision. Where after the inquiry the Commission finds the violation of human rights by public servant, it can only recommend to the concerned Government or authority to prosecute such servant or it has to approach the Supreme Court or the High Court concerned for such directions, orders or writs.

The Protection of Human Rights Act, 1993 required the NHRC to encourage the efforts of NGOs working in the field of Human Rights. In the rehabilitation of the torture victims the NGOs has an important role to play as not only medical/clinical treatment is seemed enough there should be psychological stabilization of the victims, which has to be brought in through a gradual process by way of creating a confidence by remitting fear and guilt which often encompasses a poor victim of torture.

With the realization of the fact, that people throughout the world suffer harm as a result of crime and the abuse of power, the UN General Assembly adopted two resolutions dealing with the rights of victims. First, the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 and second, the Basic Principles and Guidelines on the Rights to Remedy and Reparation for Victims of International Humanitarian Law, 2005. The UN Declaration recognized four major components of the rights of the victims of crime-access to justice and fair treatment, restitution, compensation and assistance.

In India immunity of the Government for the tortuous acts of its servants, even after the enactment of the Constitution which constitutes India into a socialist society and also contains an equality clause is still based on the principle of 'sovereign' and 'no sovereign' functions as laid down by the Calcutta Supreme Court in 1861 and no sincere efforts has been made either by the Government or the Judiciary to eliminate this feudal and vague doctrine of governmental liability in tort. Article 300 of the Constitution determined the extent of immunity of the State for the torts of its employees in India.

There is no express provision in the Constitution to grant compensation in case of violation of human rights while ratifying International Convention on Civil and Political Rights, India made a specific reservation to the Article 9(5) which provides to grant compensation in case of unlawful arrest or detention by the State. The court used Article 21 of the Constitution to enforce rights guaranteed to the people and began to grant compensation in case of violation of human rights and it's also clarified in number of cases that the sovereign immunity is not a defense in case of public law remedy.

It is now a well established proposition, that monetary or pecuniary jurisdiction, is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressed of the established violation of human rights. The purpose is to apply balm to the wounds and not to punish the offender, as awarding punishment for the offence be left to the criminal courts.

Despite a plethora of reports and declarations issued by non-governmental and inter governmental organizations, human rights and humanitarian instruments, conventions, regulations, recommendations, rules, declared and adopted both universally and regionally by inter governmental and decisions and judgments by regional and international bodies, torture and other forms of ill-treatment, however, continue to occur in more than half of all countries in the world. The following suggestions could be taken to ensure effective domestic compliance with international law and thus bridge the gap between the law on torture and practice:

- The Government of India signed the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 14 October1997 but did not ratified it. The Convention against torture requires the State parties to prevent not only the acts of torture; it is to be modified incorporating the requirement to prevent the attempt, preparation, complicity and abetment to commit an act of torture.
- The right of not to be tortured should be explicitly enshrined within the Fundamental Rights chapter of the Constitution. In addition, torture should be prohibited as a distinct penal offence in the Indian Law.
- It is suggested that the First Optional Protocol to the International Covenant on Civil and Political Rights should be ratified by the Government of India which enables the individuals to file a complaint to Human Rights Committee for effective remedies against police atrocities, when all the domestic remedies are exhausted. The Government should

take steps to take away the reservations it made while acceding to the International Covenant on Civil and Political Rights, so as to enable the Indian citizens the right to claim compensation in case of wrongful arrest or detention.

- India should ratify the Optional Protocol to the UN Convention on the Elimination of All forms of Discrimination against Women to enable the individuals to bring complaints to the committee about the violation of their rights under the Women's Convention once they have exhausted national remedies.
- Arrests should only be made strictly in accordance with legal procedures and any lapse should attract penal punishment. There should be a single and comprehensive custody record for each detained person. Such custody record should contain the details of the arrest, the subsequent action taken, legal consultation, his physical health, mental condition, the details of those who visited him in custody, the kind of food offered to him, etc. The custody record should also contain all the whereabouts of the interrogation such as who interrogated him, duration of the interrogation, the presence of others, if any. Failure to keep proper records should be made an offence. Detainees should only be held in officially recognized places of detention. Where unrecorded detentions have been proven, those responsible should be disciplined and prosecuted for unlawful imprisonment and the victim should be granted compensation for illegal detention.
- Under the Indian criminal justice administration, after taking a person in custody the investigating officers are usually trying to get confession by torture. It should be clear that use of torture and ill-treatment as a means of extracting confessions from the accused or testimony from witnesses is unlawful. In the process of investigation, arrest and detention must be the final step after knowing the whereabouts of the suspects and collection of evidence by lawful means.
- Political influence over police is resulting in misuse and abuse of police power.

Often the politicians use the police as weapon against the opposite party. The noncompliance of the politicians' instructions is likely to result in transfer of the police officers. There should be no interference in the functioning of the police system. As the Royal Commission of the Police in Great Britain observed, "The Police should hold allegiance to the law and judiciary and there should be no interference by any authority in the performance of their legal duties." In Japan, to ensure the complete insulation of the police against political pressure, all promotions are

determined by the Prefecture Police Organization or the National Public Safety Commission itself and these are all subject to the approval by the Prefectural/National Public Safety Commission. Neither bureaucrats nor elected politicians can become members of either the National or Prefectural Safety Commission. Government of India should also implement the similar system to isolate the day to day working of police from political influence.

- Steps should be taken for recruiting highly qualified and competent personnel having sensitivity to human rights, considering the rising educational standard and financial standard of the society. During the police training the main focus is on physical training. But, there should be modification, instead of 'muscle police' we require a police having 'brain' and 'heart' since they have to deal with their own fellow human beings and not with their enemies.
- In all police training institutions in the country there should be constant emphasis on the fact that no explanation or expediency can justify the use of torture. Police personnel should be provided with periodical training in the field of human rights. Regular gender sensitization and orientation programs should be conducted for police personnel of all levels.

There should be greater emphasis on the scientific techniques of interrogation and investigation. In the present system, a policeman does not know how to make a criminal talk except through the use of third degree. The police personnel are getting only 30% of their time on investigation duties. Due to the shortage of time they resort to the short-cut method of torture. As recommended by 14th Law Commission investigating staff should be separated from law and order staff. The investigating officer should be given sufficient time for investigation.

As per the provisions of the Police Act, 1861, the police officers are to be considered to be always on duty and they are not allowed to have regional or national holidays. Due to the continuous work without rest the police personnel tend to become mentally and physically unfit and they become highly insensitive to human rights. They should be given special allowances for the duty. Man power should be increased in the police stations. Better living and service conditions should be provided to curb the corruption in police system.

There should be prompt independent investigations, into all the allegations of torture or ill-treatment. Police officials suspected of involvement in torture or ill-treatment should not be allowed to be associated with the investigation into the allegation of torture and should be removed from any position of influence over alleged victim or witnesses for the duration of the investigation and any trial proceedings. The police officer should not be present during postmortems or the medical examination of detainees. The victim's relatives should have the right to request any registered doctor of their own choice to be physically present while a post-mortem is actually being conducted.

Complainants, witnesses and others at risk should be protected from intimidation and reprisals. A witness protection programmed should be established in every State. Methods and findings of investigation should be made public and the victim or the victim's family must be allowed access to the complete records of the enquiry.

Case of human right abuses should be put on different footing and they must be acted on quickly and promptly. The National Police Commission in its first Report in February, 1979 recommended mandatory judicial enquiry in case of an alleged rape, death or grievous hurt in police custody. Judicial enquiry should be held by an Additional Sessions Judge nominated for the purpose that could be designated as the District Inquiry Authority.

As recommended by the Law Commission in 113th Report, it should be provided in the Indian Evidence Act to provide for raising a presumption against the police officers or public servant in case of any injury caused to a person in custody or resulting in his death.

The requirement of sanction of prosecution under Section 197 of Criminal Procedure Code of police personnel in all cases of torture should be dispensed with.

- Judicial Officers play a crucial role in ensuring that legal procedures have been followed in arrest and detention and that abuses have not been occurred. They should therefore be encouraged to play an active role in detecting and remedying torture. Magistrates should question detainees brought before them to ascertain that they have not been tortured or ill-treated, have not made involuntary confessions.

- A Judicial Magistrate vested with all powers to grant bail, record confession, issue judicial processes should be available round the clock to attend the judicial needs of the arrestees. This system may be called as 'Mobile Judicial Unit'.
- The majority of victims of police atrocities belong to economically backward classes. They are not in a position to approach the Superior Courts for initiating contempt proceedings against the errant police officers. So, it is suggested that even the lower courts should be empowered to hear the grievances and to grant compensation to the aggrieved persons. At least, the Sessions Judge should be empowered to award compensation to the victim of torture.
- The Protection of Human Rights Act, 1993 empowered the Commission to investigate allegations of human rights violations which took place over one year previously; should be amended to extend this time duration to three years. It should also be given the power to visit custodial institutions without having previous notification to State officials. Section 19 of the Act should be amended to empower the Commission to investigate allegations of human rights violations by members of armed and paramilitary forces. Commission's recommendations should be promptly complied with. It should be given explicitly powers to refer cases in which it has found sufficient evidence to merit prosecution for a human rights violation directly to the prosecuting authority so that appropriate action can be taken against individuals concerned. District level Human Rights cells should also be constituted in all the district head quarters similar to the State level Human Rights Commission.

Justice V.R. Krishna Iyer said, "Custodial Torture was worse than terrorism because the authority of State was behind it. Laws like POTA and TADA were 'perilously too closed' to State sponsored torture.

Although these suggestions can help yet will is the basic requirement to eliminate torture under custody.

Custodial torture and custodial deaths is not a new phenomenon. It is prevailing in our society from the ages. Despite several initiatives in recent years, torture and ill treatment continues to be endemic throughout India and continues to deny human dignity to thousands of individuals. Custodial torture has become so common these days that not only the police and bureaucracy but even people take it for granted as a routine police practice of interrogation. The result is that the

news of such outrageous conduct causes nothing more than a momentary shock in the society. When a custodial death occurs, there is a public uproar, which either dies down with time or at the most subsided by constituting an enquiring committee. The law in all countries authorizes the police to use force under certain circumstances. This authority is in fact, basic to its role and cannot be questioned. It is a part of policeman's legal mandate. Despite of legislations, which secures the life and liberty of a human being, despite of so many reports given by so different committees time to time, why there is still custodial torture, torture and custodial deaths are happening. We do accept that police works under so much of pressure and other disturbances, than work is also there, but the police certainly has no right to inflict brutality on a helpless person under its custody ignoring the 'canons of law'. In a democratic country like India, it's the people and not the police who are the real masters as the sovereign power is rested with them. The police are simply the agent of the government which is ultimately accountable to the people. The police have to protect the society from the acts of murderers, armed robbers, habitual criminals, and terrorists and make it a safe place to live in. Thus, apprehension of the gang of dacoits, arrests of accused who violently defies arrests etc. Is the situations which call for a measure of counter-torture by police.

Need for an anti-torture legislation in India:

India has practiced and continues to practice the 'third degree' with impunity.

India signed the UN Convention against Torture in 1997, but neither has it ratified nor followed or preceded by domestic legislation to outlaw and prevent custodial torture.

India's non-ratification of the Convention is both surprising and dismaying.

In 2010, the then government introduced Prevention of Torture Bill in the Lok Sabha in 2010 and had it passed in 10 days. The bill as passed by the Lok Sabha was referred to a select committee of the Rajya Sabha.

The committee gave its report recommending the Bill's adoption later the same year. It lapsed with the dissolution of the 15th Lok Sabha. And was not revived by the 16th, the present Lok Sabha.

The current government spoke of amending Sections 330 (voluntarily causing hurt to extort confession) and 331 of the Indian Penal Code, but in vain.

there has been no consistent documentation of torture-related complaints. The National Crime Records Bureau (NCRB) does not document cases of custodial torture. The NHRC does deal with cases of torture in custody, but the annual figures related to such cases do not get reported in its reports.

In the ten-month period between September 2017 and June 2018, English language news reports on Internet noted 122 incidents of custodial torture resulting in 30 deaths. In several cases among these 122 incidents, there were multiple victims.

The procedure to deal with children in conflict with law is different from the routine procedure of criminal justice system. But incidents show that children have been subjected to torture in police custody

Torture is not just confined to police custody, but is also perpetrated in otherwise assumed to be "safer" custodial institutions like judicial custody (prisons), juvenile homes, de-addiction centers etc

Nine years after the report of the Select Committee and 21 years after signing the Convention, India is yet to legislate a law that will outlaw torture

In a matter that concerns 'life and liberty', the Supreme Court is the guardian of the Constitution's guarantees.

The Law Commission of India submitted its 273rd report recommending government to ratify the UNCAT and also proposed the Prevention of Torture Bill 2017.

Definition of torture should be broadened to include discrimination of any kind as one of the purposes of torture. It is widely recognised that discrimination based on religion, caste and association with ideas does have an impact on the incidence and extent of torture.

Given the fact that there is a possibility of a range of acts that can be committed under torture, cruelty and ill-treatment leading to differing severity of harm—the punishment prescribed should have further gradation. Also, death penalty should not be included as the punishment.

The bill should enlist possible factors based on which the calculation of compensation should be devised.

It is imperative that the democratic opposition makes the ratification of the Convention and a new anti-torture legislation part of its common programme. The 17th Lok Sabha must take a stand on this matter.

It gives us a choice to join the civilized world in moving away from ancient barbarism.

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