TORTURE AND CUSTODIAL DEATH, ROLE OF THE INDIAN JUDICIARY AND NATIONAL HUMAN RIGHTS COMMISSION

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

SUBMITTED BY

MR. SUBRAT GUPTA

1200997053

SCHOOL OF LEGAL STUDIES

UNDER THE GUIDANCE OF

DR. PROF. GITU SINGH

DIRECTOR

SCHOOL OF LEGAL STUDIES

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BBD UNIVERSITY

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SUBRAT GUPTA

1200997053

LL.M. (2020-21)

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Dr. Prof. Gitu Singh
Babu Banarasi Das University
Lucknow

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Subrat Gupta

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LIST OF ACRONYMS AND ABBREVIATION

AIR - All India Reporters

ACJ - Accident Claim Journal

Cr. L. J - Criminal Law Journal

Cr. P. C. - Criminal Procedure Code

IPC - Indian Penal Code

NOC - Notes of Cases

NHRC - National Human Rights Commission

OPDR - Organization for the Protection of Democratic Rights

PUCL - People Union for Civil Liberties

PUDR - Peoples Union for Democratic Rights

SCC - Supreme Court Cases

List of cases

1. Meneka Gandhi vs. Union of India
2. D.K Basu vs. State of West Bengal

3. Kasturi Lal vs. State of U.P
4. Rural shah vs. State of Bihar
5. Bhim Singh vs. State of Jummu and Kashmir

6. A. D.M Jabalpur vs Shivakant Shukla
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12. R vs. Laster
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15. Raghubir Singh vs. State of Haryana

16. Bhagwantar Singh vs. State of Punjab

17.Ram Sagra Yadav vs. State of U.P

18.Rajasthan vs. Vidyawati

19.Saheli vs. commissioner of police

20.Neelabati vs. State of Orissa

21.Kharak Singh vs. State of U.P

22.Sunil Batra vs. Delhi Administration

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25.Shivappa vs. State of Karnataka

26.Kashmir a Singh vs. State of Panjab

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CHAPTER-1

INTRODUCTION

1.1 Custodial Deaths

Importance of the problem

Complaints of police excess and torture of suspects in police custody have been made in the past. Complaints have assumed wider dimensions, as the incidents of torture, assault and deaths in police custody have increased in alarming proportions. The Union Home Minister has in a written reply in Parliament on December 6th, 1999, declared that 535 persons died in police lockups during the past three years. The Honourable Minister stated that the figure was supplied to the Government by national human rights commission. This means that on an average each year 178 persons die in police custody, the rising human rights consciousness of the community, the role of press, human rights activists, NGOs -have all resulted in increasing attention being paid to custodial deaths than it was in the past. In last decade in the state of Andhra Pradesh, widespread public protest against custodial deaths was witnessed. The public protest was sometimes violent in the form of spontaneous mob attack on the police stations forcing the police to flee away from the station leaving the police station to be burnt down by the irate mob or else stand up and open fire on the mob in defence of the police station and themselves. In either case the incident is ugly and the Government is pout in dock. Such incidents of mob attack on police stations occurred in Macherla, Veeravasaram,Tadepalieguden, Guntur, Nalagonda, Amruthaluru, Hyderabad and recently in Vijayawada, - to mention a few, during the last decade. In each of these cases there was lot of hue and cry in the media, by the opposition and the Government of Andhra Pradesh responded by suspending police personnel and ordered judicial inquiries into the custodial deaths concerned. Thus the last decade and half marked not only the raise of custodial deaths but also the debate over it. In view of the growing public importance and in view of the police in the form of custodial deaths, the problem assumes importance deserving as in-depth study.

1.2 Need for the Present study:

The problem of custodial deaths attracted the attention of press, NGO's in the field of human rights, political parties, peoples representatives, National Human Rights Commission, judiciary and all have contributed in their own way to trace the causes of custodial deaths and suggest remedies for its prevention. The academics have not paid much attention to study the various facets of the problem custodial deaths. Existing literature has disclosed in review of the same. In depth study of the problem has been made and the research in the field is only minimal. Though considerable study has taken place on the police and police system. It was done mostly by the police commissions. These Commissions were not concerned with the problem of police excesses. The Enquiry Commissions appointed by the State Governments to inquire into a custodial death were confined only to the particular case under reference and they have not studied the various facets of the menace of the custodial deaths in their entirely. The reports submitted by the Enquiry Commissions were not made public nor on the floor of the house. On the other hand the State Governments have paid scant regard to the recommendations and findings of the Commissions. The recent statics of the NHRC have disclosed that the rate of custodial deaths is raising every year along with raising human rights awareness. The NHRC also inquired into cases of certain custodial deaths. But fact remains that it has no power to take action on the basis of the findings. Custodial death results in the deprivation of right to life not in accordance with the procedure established by law. Custodial death is the outcome of the over action or inaction of the police. Custodial death results in an unnatural death. Such a serious problem which is threatening the very basic right to life remained unexplored and no major empirical research has been undertaken to examine the problem from its national, international and juridical perspective. Thus, there is a dearth of in-depth and intensive research on the topic.

1.3 Objective of the Study:

The specific objectives of the study are as follows:

(a) To trace the history and culture of torture in India and abroad, and to analyze the reasons for its existence.

(b) To examine the international and national legal regimes against torture and their effectiveness in preventing torture and punishing the offenders

(c) To analyze the rights of the accused/ suspect at the pretrial stage in the international and national legal regimes

(d) To examine the response of the judiciary to custodial deaths and analyze the human rights

jurisprudence of the Supreme Court in this regard**.**

(e) To study the development of law in relation to the liability of the state for the acts of the servants in regards to the problem of custodial deaths.

(f) To study the response of the National Human Rights Commission to the problem of custodial deaths and NGOs.

(i) To recommend suitable remedies and alternative protective measures to prevent custodial deaths.

1.4 Hypothesis of the Study:

The hypothesis of the study are:

(a) The deaths in police custody take place due to prolonged illegal custody and torture.

(b) Most of the victims of custodial deaths are those with criminal background who are picked up and tortured by the police resulting in custodial deaths.

(c) The victims of custodial deaths are drawn from the lower class and caste of the society.

1.5 Methodology:

The reliability and dependability of any study depends on the method adopted. Keeping in view the objectives of the study the library method, case study method and social research methods have been adopted. In view of the socio-Legal and empirical nature of the study social science research methods such as interview technique, questionnaires etc have been applied. The data is collected from primary and secondary sources such as the Government sources, NHRC, the civil rights organizations like Amnesty International, APCLC, reports of enquiry commissions, judicial decisions, press clippings, articles in legal and other journals etc. The information and data collected are presented in simple tabular from and the findings are recorded. From the recorded finding sand data conclusion are drawn and the hypotheses are tested. The results are presented at the end of the study. The study also forwards pragmatic suggestions to the policy maker's to mitigate the menace of the custodial deaths.

1.6 Limitations of the study:

A study like this has serious limitations in all respects starting from the collection of the data. The official records (such as the enquiry reports of the executive magistrates, the correspondence

between the police administration and the Government, the post mortem reports) are treated as confidential and are not easily accessible. In view of the nature of the study the police and executive magistrates do not show interest to part with information. Due to these serious limitations it has become imperative to depend on secondary but reliable data, such as the reports of NGOs like Amnesty International, APCLC, Human Rights Forum etc.

CHAPTER-2

CUSTODIAL DEATH AND JUDICIAL RESPONSE IN INDIA

The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty – an inhuman trait that springs out of a perverse desire to causes offering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking. It is one of the worst crime in the civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. Prisoners have human rights and prison torture is the confession of the failure to do justice to living man. For a prisoner, all fundamental rights are an enforceable reality though restricted by the fact of imprisonment. Simply stated, the death of a person in custody whether of the Police or Judicial will amount to Custodial Death. No doubt, the police plays vital role in safeguarding our life, liberty and freedoms. But the police must act properly, showing fall respect to the human rights of the people, remembering that they are also beneath the law, not above it and can be held liable for the violation of human rights. One can always argue that prisons formed islands of lawless discretion in a society guided by the values and often the practice of the rule of law, where the authorities exercised arbitrary power over the prisoner's lives. The charge of brutal custodial violence by the police often resulting in the death of the arrestees is not new. The figures of Amnesty International in 1992 show the number of deaths in police custody in India during the year 1985 to 1991 was 415. Figures compiled by the National Crime Records Bureau show that during the year 1990-92, as many as 258 rapes and 197 deaths. In police custody were reported from all over the country. It is true, a big numbers of custodial violence, incident go unreported. Arun Shourie once observed: The victims were invariably poor. Several of them hauled in on no formal charges at all. Even in the case of persons who were arrested, in an over whelming large number of cases they were all accused of petty offences in fact, the victims of custodial violence are people from poor and backward sections of the society with little political or financial power to back them. Personal enmity, caste and political considerations and at times pecuniary benefits become important considerations for custodial deaths rather than investigation of cases.

2.1 Conceptual aspect regarding custodial death

Law has always discouraged the acts or omissions which in general can affect right in and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. Whenever death occurs in custody, it raises the public interest and attracts media attention. Not that at each time the death is due to violent causes but at times maybe due to natural causes or due to inadequate medical facilities or medical attention and diagnosis, or negligent behavior of authorities or may be due to physical abuse and torture. Since time immemorial man has been attempting to subjugate his fellow human beings[1]. Those in power are used to twisting and turning the people through violence and torture, and torture under custody has become a global phenomenon. Men, women and even children are subjected to torture in many of the world's countries, even though in most of these countries, the use of torture is prohibited by law and by the international declarations signed by their respective representatives. A problem of increasing occurrence and repugnance had been the methods of interrogation and torture perpetrated and detainees. Persons held in custody, by police or by prison authorities, retain their basic constitutional right except for their right to liberty and a qualified right to privacy. The Magistrate inquest is mandatory for any death of a person custody to ensure examination of the circumstances leading to death. Beyond Magistrate's inquest and in recent year's information to Human Right Commission, however, there is no formal public scrutiny of in-prison deaths and under such situations many avoidable factors leading to death remains unexplored[2].

2.2 Constitutional Rights

From judicial perspective' the right to life and personal liberty' contained in Article 21 of Indian Constitution compasses all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice; custodial justice in particular, and law enforcement. It also brings into the fold of Article 21, all those directive principles of State policy that are essential for a 'life with dignity'. The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right but is the basic human right from which all, other human rights stem. The right existed even prior to the commencement of Indian Constitution. In *A.D.M.Jabalpur Vs. Shivakant Shukla* case, Justice

[1] *Sukhla V.n., Constitution of India, Eastern book Company, 10th edition, (2000A), reprinted (2007), Lucknow, p827-854*

[2] *Constituent Assembly debates. Volume 7 . 953*

H.R. Khanna rightly observed, sanctity of life and liberty was not something new when the Constitution was drafted. It represented a facet of higher values which mankind began to cherish in its evolution from a state of tooth and claw to a civilised existence. Coming into force of the Constitution.

Likewise, the principle that no one shall be deprived of his life and liberty arbitrarily without the authority of law was not the gift of the Constitution. It was a necessary corollary of the concept relating to the sanctity of life and liberty which existed and was in force before the. The Court adopted an annotation of Article 21, in *Kharak Singh Vs. State of UP*[3] *and* expanded the connotation of the term 'life' and said "... Life is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed[4]. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world. In *Maneka Gandhi Vs. Union of India* Bhagawati[5]. J. opined that "the fundamental right of life and personal liberty has many attributes and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19" and in the same case it was held that the procedure contemplated under Article 21 is a right, just and fair procedure, not an arbitrary or oppressive procedures. The procedure which is reasonable and fair must now be inconformity with the rest of Article 14. In other words, the Supreme Court while considering the ambit of Article 21 in a number of cases established that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Article 21, such law in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the requirements of that Article. Further any procedure contemplated by State to curtail 'life and personal liberty' of an individual should meet the requirement of Article 14.

In an another case of *Sunil Batra*[6] the Supreme Court held that: the Prison administration will be liable in a case where the breisioner breaks down because of noetic distress, supernatural bow or bodily lessons athwart the valid limit of legal goal thus, the said case gave the opportunity for the court to condemn torture. In case of *Khatri* vs. *State of Bihar*[7] the Supreme Court in a public In-

[3] *AIR 963 SC 83*
[4] *supra note 1*
[5] *(1978) SCC 248*
[6] *AIR 1980 SC 1579*
[7] *AIR 1981 SC 928*

terest litigation case ordered to investigate and punish the guilty Police officers who barbarically blinded about 30 prisoners by piercing their eyes with needle sand pouring acid into their eyes. Further, Supreme Court cheapish this uncivilized distress as transgression of article 21 and adjudge indemnity to the victims.

A telegram sent by a under trail prisoner was treated as writ petition in *Prem Shankar Shukla VS. Delhi Administration*[8], when an under-trial prisoner was handcuffed and chained, he sent a telegram to the court which was treated as writ petition.

The Supreme Court specifically referred Art. 5 of Universal Declaration of Human Rights and Article 10 of the Covenant on civil and Political Rights and held that hand cuffing as under Trail is impermissible torture ans in violative of Article 21. The Court examined the relevant Act, Rules and standing orders and hied that:

"Handcuffing prima facie in human and therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absence of fair procedure of fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repugnant to Article. 21. Thus, we must critically examine the justification offered by the State for this mode to restraint. Surely, the competing claims for securing the prisoner and protecting his personally from barbarity have to be harmonized. To prevent the escape of an undertrial is in public interest, reasonable, just and cannot, be itself, be castigated. But to binda man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him foot hours in the courts is to torture him, defile his dignity, vulgarise society and fool the soul of our constitutional culture. Where then do we draw the human line and how far do the rules err in print and practice?"

Thus, *in Premshanker*,[9] the supreme Court specifically referred to the right against torture in Article. 5 of the Universal Declaration Human Rights and interpreted in Article 21 to include right against torture.

[8] *AIR 980 SC 1535*
[9] *(1980) 3SCC 526*

2.3 Torture

Convention against Torture explicitly states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as justification of torture". The Supreme Court"- of India and the National Human Rights Commission have upheld this view in their various judgments/recommendations and have jointly and individually established that the prohibition of torture is absolute and may not be suspended no matter how heinous the crime for which someone has been arrested. It is aright from which the Government is not permitted to derogate, even in situations of emergency. 44th amendment of the Indian Constitution declares Article 20 and 21 as non-denotable even in emergency situations. The term 'torture' is defined in the Convention against torture and other cruel, inhuman or degrading treatment or punishment. Article 1.1 of the same defines torture 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 an government strength. It does not cover hurt or suffering grow any from inbred in or emergent to legal sanctions". Article 21 of Constitution only provides" no person shall be deprived of his life or personal liberty except according to procedure established by law". The term 'life' or personal liberty has been held to include the right to live with human dignity and, therefore, includes within its ambit a guarantee against torture and assaults by the state or its functionaries. pick off to distress or to brutal, inhumane or offensive therapy or castigation can move the higher Courts for various judicial remedies under Article 32 and 226 of the Constitution.[10]

2.4 Arrest and Detention

The Supreme Court initiated the development of "Custodial Jurisprudence" in D*.K. Basu Vs. State West Bengal.*[11] The case came up before the Court through a writ petition under Article 32 of the Constitution by an NGO. In this case the Chief Justice of India's notice was drawn to a news published in *The Telegraph* regarding deaths in police lock-ups and in jail in the State of West Bengal. It was requested in this petition to examine in depth and to develop custodial juris-

[10] *Lbid,p-277 & 542*
[11] *AIR 1997 SC 3017*

prudence. In this case the Court outlined the following requirements which should be followed in all cases of arrest or detention as preventive measures:

‘’l. 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 designation the police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

2. 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.

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

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

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

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of arrestee and the name and particulars of the police officials in whose custody the arrestees.

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

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

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

10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided to all headquarters, like District and state have information regarding to the arrest and place of custody of the accused should be communicated by the concerned department who has arrested, with 12 hours of effecting the arrest to the police control room and also displayed it's on notice board.''

The Court observed that the article 21 and 22(1) of the consultation must be followed strictly if requirements there in. In *Nilabati Behera* Vs. *State of Orissa,*[12] the Court observed that The Article 21, fundamental right does not debar. The prisoner and detainees from their right and is only such restrictions are permissible under law, which can be imposed an enjoyment of the fundamental right of the arrested person and détentes. It was observed ... there is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions.

The wrongdoer is accountable and the State is responsible if the person in custody of the police is deprived of his life except according to procedure established by law ... "In this case Court awarded a sum of Rs. 1.5 lakhs to the mother as her son had died in police custody. The Court's judgment also referred to Article 9(5) of the International Covenant on Civil and Political Rights, which indicates that to compensate in enforceable right is not alien to the concept of enforcement of a guaranteed right. .As such no indeed express provision in the consultation of India detention shall have an enforceable right to compensation.

2.5 Human Dignity

The Latin maxims *salus populi est suprema lex* (the safety of the people is the supreme law) and *salus republicae est supremalex* (safety of the State is the supreme law) co-exist and are not only important but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. However, the action of the State must be "right, just and fair". Practising any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore would be impermissible, being offensive to Article 21. The Court noted in the *Basu* case that .As such no indeed express provision in the consultation of India the awarded compensation for violation of granted fundamental right to life, in spite of this lacuna the Court has judi-

[12] *(1993) 2SCC 746*

ciously In case of established unconstitutional deprivation of person liberty have right to compensation . In *Sunil Batra Vs. Delhi Administration,* the Court was called upon to determine the validity of solitary confinement and keeping a prisoner in fetters. Justice Desai, speaking for the majority, admitted that there was no provision in the Indian Constitution like the Eighth Amendment of American Constitution which forbids cruel and unusual punishment. But, he pointed out that conviction did not degrade the convict to be non-person, vulnerable to major punishments imposed by the jail authorities without observance of due procedural safeguards. He also emphasised a Court's duty towards a prisoner as he was in prison under its order and direction. He held "We cannot be oblivious to the fact that the treatment of a human being which offends human dignity imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14". In the same case another fact was brought to the notice of the Court that under trials were kept along with the convicts. Justice lyer observed: "The undertrials who are presumably innocent until convicted are being sent to jail, by contamination, made criminals - a custodial perversity which violates the test of reasonableness in Article19 and of fairness in Article 21. How cruel would it be if one went to a hospital for a check-up and by being kept along with contagious cases came home with a new disease". The learned judge drew the picture of Tihar prison thus: "Tihar prison is an arena of tension, trauma, tantrums and crimes of violence, vulgarity and corruption. And to cap it all, there occurs the contamination of pre-trial accused with habitual, and 'injurious prisoners of international gangs'. The crowning piece is that the jail officials themselves are allegedly in league with the criminals in the cell. That is, there is a large network of criminals, officials, and non-officials, in the house of correction. Drug racket, alcoholism, smuggling, violence, theft, unconstitutional punishment by way of solitary cellular life, and transfer to other jails are not uncommon"

The Court held in this case that personal liberty of the person who is incarcerated is to a great extent curtailed by punitive detention. The freedom to gait, blend aggregate, allocution, quantum consistency with co- prisoner if verily compression would be a violation of Article 21 unless the curtailment has the backing of law. In another important judgment delivered by the Supreme Court in *Francis Corallie Mullin Vs. the Administrator, Union Territory of Delhi*[13], Bhagawati J. observed the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the headend facilities for reading, writing and expressing oneself in diverse forms, freely moving out and mixing and coming ling fellow human beings". In a number of cases the Supreme Court held that handcuffing of prisoners is against

[13] *(1981) 1 SCC 608*

human dignity and violative of Article 21. In *Prem Shankar Shukla Vs. Delhi Administration*[14], while delivering the judgment Justice Krishna Iyer drew attention to Article 5 of the Universal Declaration of Human Rights and held that handcuffing of a prisoner was unconstitutional if there was any other reasonable way of preventing the escape of the prisoner. He reiterated the Article 21, now the sanctuary of human values, prescribes fair procedure and for bits barbarities, punitive as well asprocedural. In *State* of *Maharashlra Vs. Ravikanl,* the Court came down heavily on the Government for handcuffing an under trial prisoner and making him parade in streets in a procession by the police. In this case the Court directed the Government for paying a sum of Rs. 10,000 to the victim for the humiliation he had suffered.

2.6 Interrogation

Provisions innumerate In Chapter XII of Criminal Procedure Code confers power on the Police to examine accused person and witnesses. However, while carrying out such job it is of utmost importance to follow all other provisions of the code as well as Constitution to ensure human dignity and personal liberty of the person under examination. While examining an accused/witness for the purposes of fact finding the following legal provisions should be paid heed to:

(i) Section 54 of the Cr. P.c. confers upon an arrested person the right to have himself medically examined.

(ii) A confession made to police officer IS not admissible in evidence under Section 25 and 26 of the Indian Evidence Act.

(iii) Section 162 of Cr. P.C., also provides that no statement of a witness recorded by a police officer can be used for any purpose other than that of contradicting his statement before the Court.

(iv) Section 24 of Indian Evidence Act also provides that when admissible, confession must be made voluntarily. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings.

(v) An additional safeguard is that under Section 164 of the Cr.P.c., it is for the Magistrate to ensure that a confession or statement being made by an accused person is voluntary.

There are a few constitutional safeguards provided to a person to protect his personal liberty against any unjustified assault by the State. Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody

[14] *(1980) 3 SCC 302*

without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice. Article 22(2) directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of the arrest to the Court of the Magistrate. Article 20(3) of the Constitution lays down that a person accused of an offence shall not be compelled to be a witness against himself. Manner In which examination of accused should be conducted is elaborated under the head 'confession'.

2.7 Confession

Article 20(3) of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself; and Section 161 (2) Cr.P .c. enjoins that person supposed to be acquainted as per the fact s and circumstances of the case. the bound to answer truly all questions relating to the case but to him by any police officer making an investigation under Chapter XII of the Code, to expose them to criminal charges or penalty, the answer to which would hare tendency case other than questions or forfeiture. Case of *Nandini Satpathy Vs.* P.L. *Danis,* is the classic example in this context, wherein the Supreme Court held that Section 161of Cr.P.C. enables the police to examine the accused during investigation. The interdictory scope of article 20(3) goes astern to the status of police inquiring not commencing in court only. In our judgment, the provisions of article 20(3) and Section 161(1) substantially covers the same area, so far as police investigations are concerned. The ban oneself-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case protect the accused to Commission the other offences pending or imminent, which may deter them from voluntary disclosure. of criminatory matter We are disposed to read compelled testimony' as evidence procured not merely by physical threats or violence but psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidator 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).The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. 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 policemen for obtaining information from an accused strongly suggestive of guilt, it becomes' compelled testimony', violative of Article 20(3).Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Article 20(3). But frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Article 20(3). The manner of mentioning it to the victim of inter-

rogation may introduce an element of tension and tone of command perilously hovering near compulsion. Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence. The *Miranda* decision has insisted that if a med accused person asks for a lawyer's assistance, at the stage of interrogation, it shall be granted before commencing or continuing with the questioning. We think that Article 20(3) and Article 22(1) may, in a way, be telescoped by making it prudent for the police to permit the advocate of the accused, if there be one, to be present at the time he is examined. Over reaching Article 20(3) and Section161 (2) will be obviated by this requirement. In the same case it was categorically stated that if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-incrimination secured in secrecy and by coercing the will. The police need not wait more than for a reasonable while for an advocate's arrival. But they must invariably warn-and record that fact-about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgement. The symbiotic need to preserve the immunity without stifling legitimate investigation persuaded the court to indicate that after an examination of the accused, where lawyer of his choice is not available, the police official must take him to a magistrate, doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, which should be followed by judicial or some other custody for him where the police cannot reach him. That collocutor may briefly record the relevant conversation and communicate it- not to the police-but to the nearest magistrate. Pilot projects on this pattern to guide the practical processes of implementing Article 20(3) were strongly suggested in the case. It was further observed that: above all, long run recipes must be innovated whereby fists are replaced by wits, ignorance by awareness, 'third degree' by civilised tools and technology. Special training, special legal courses, technological and other detective updating are important. An aware policemen is the best social asset towards crimelessness. The consciousness of the official as much as of the community is the healing hope for a crime-ridden society. Judge-centered remedies don't work in the absence of community- centered rights. Investigatory personnel must be separated from the general mass and given in-service specialisation on a scientific basis. The policeman must be released from addiction to coercion and sensitized to constitutional values. Considering the statutory safeguards to protect this right in *Saroan Singh Vs. State of Punjab,* the Court held that" act of recording confession under Section 164 Cr. Pc.is very solemn act and, in discharging his duties under the said Section, the Magistrate must take care to see that there requirement of sub-section (3) of Section 164 are fully 'satisfied. It would of course be necessary in every case to put the questions prescribed by the High Court circulars but the questions in-

tended to be put under sub-section (3) of Section164 should not be allowed to become a matter of mere mechanical enquiry. No element of casualness should be allowed to creep in and the Magistrate should be fully satisfied that the confessional statement which the accused wants to make is in fact and in substance voluntary. Emphasising the importance of Section 164 of the Cr. Pc. the court observed that: "the whole object of putting questions to an accused person who offers to confess is to obtain an assurance of the fact that the confession is not caused by bait, bluster or assent having context to the allegation against the respondent person as mentioned in Section 24 of the Indian Evidence Act. There can be no doubt that, when an accused person is produced before the Magistrate by the investigating officer, it is of utmost importance that the mind of the accused person should be completely freed from any possible influence of the police and the effective way of securing such freedom from fear to the accused person is to send him to jail custody and give him adequate time to consider whether he should make a confession at all. It would naturally be difficult to lay down any hard and fast rule as to the time which should be allowed to an accused person in any given case. However, speaking generally, it would, we think, be reasonable to insist upon giving an accused person at least 24 hours to decide whether or should not make a confession. Where there may be reason to suspect that the accused has been persuaded or coerced to make a confession, even longer period may have to be given to him before his statement is recorded In the same case it was further held that even if the confession is held to be voluntary, it must also be established that the confession is true and for the purpose of dealing with this question it would be necessary to examine the confession and compare it with the rest of the prosecution evidence and probabilities in the case". The Court reiterated its view in *Davendra Prasad Vs. State of UP*[15], by saying that before a confessional statement made under S. 164 of the Code of Criminal Procedure can be acted upon, it must be shown to be voluntary and free from police influence. While determining the Magistrate's role, Supreme Court in *Shivappa Vs. State* of *Kamataka* held: From the plain language of Section164 of Cr.P.C. and the rules and guidelines framed by the High Court regarding the recording of confessional statements of an accused under Section 164 Cr.P.C., it is manifest that the said provision emphasise an inquiry by the Magistrate to ascertain the involuntary nature of the confession. This inquiry appears to be the most significant and important part of the duty of the Magistrate recording the confessional statement of an accused under Section 164 Cr.P.C.

The failure of the Magistrate to put such questions from which he could ascertain the voluntary

[15] *1978 Cr LJ1614, AIR 1978 SC1544*

nature of the confession detracts so materially from the evidentiary value the confession of an accused that it would not be safe to act upon the same Full and adequate compliance not merely in form but in essence with the provisions of Section164 of Cr .P.c. and the rules framed by the High Court is imperative and its non-compliance goes to the power of Magistrate jurisdiction to record the confession and render the confession unworthy of credence. Before proceeding to record the confessional statement, a searching enquiry must be made from the accused as to the custody from which he was produced and the treatment he had been receiving in such custody in order to ensure that there is no scope for doubt of any sort of extraneous influence proceeding from a source interested in the prosecution still lurking in the mind of an accused. In case the Magistrate discovers on such enquiry that there is ground for such supposition he she rid give the accused sufficient time for reflection before he is asked to make his statement and should assure himself that during the time of reflection, he is completely out of police influence. An accused should particularly be asked the reason why he wants to make a statement which would surely go against his self-interest in course of the trial, even if he contrives subsequently to retract the confession. Besides administrating the caution, warning specifically provided for in the first part of sub-section (2) of Section 164 namely, that the accused is not limitation to face a confession and that if he does so, it may be used as evidence against him as evidence in relation to his complicity in the offence at the trial, that is to follow, he should also, in plain language, any apprehended is not enough, be assured of protection from any sort of apprehended torture or pressure from such extraneous agents as the police or the like in case he declines to make a statement and be given the assurance that even if he declined to make the confession, he shall not be remanded to police custody.

The Magistrate who is entrusted with the duty of recording confession of an accused coming from police custody of jail custody must appreciate his function in that behalf as one of a judicial officer and he to take cognize in case the authority concerned must apply his judicial mind to ascertain and satisfy his conscience that the statement of the accused is not account of any. That indeed is the essence of a ‘voluntary' statement within the meaning of the provisions of Section 164 Cr.P.C and the rules framed by the High Court for the guidance of the subordinate courts. Moreover, the Magistrate must not only be satisfied as to the voluntary character of the statement, he should also make and leave such material on record in proof of the compliance with the imperative requirements of the statutory provisions, as would satisfy the court that sits in judgment in the case, that the confessional statements was made by the accused voluntarily and the statutory provisions were strictly complied with. Even though an accused makes a confession and pleads guilty, the Magistrate should examine him under Section 313 Cr.P.C to enable him to explain the circumstances under which the offence was committed. The confession of a co-

accused is not substantive evidence. It can be used in service when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of his conclusion deductible from other evidence. When there is no substantive evidence about a fact or circumstance, the previous statement of the accused to prove the fact or circumstances cannot be relied upon, and no conviction can be based solely on such a statement.

2.7.1 Information Leading to Discovery

While investigating into an offence, it is obvious for the investigative agency to seek information related to weapons of offence, stolen property, and dead body of the victim and other similar vital constituents of the offence from the accused suspect. However, it is very important to remember that while eliciting such information from the accused, the investigating official should not resort to torture or any other similar methods. All requirements elaborated under head 'confession' is equally applicable while seeking information from the accused for the purposes of discovery.

2.8 Custodial Death

Worst kind of crime in a civilized society. -

Death in police custody is one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture n custody flouts the basic rights of the citizens and is an affront to human dignity.' In *Bhajan Kaurv. Delhi Administration through the* Lt. *Governor* the Delhi High Court while determining the scope and width of Article 21 of the constitution held as follows: “Personal liberty is fundamental to the functioning of our democracy. The lofty purpose of Article 21 of the Constitution would be defeated if, the State does not take adequate measures for securing compliance with the same. The State has to control and curb the *mala fide* propensities of those who threaten life and liberty of others. It must shape the society so that the life and liberty of an individual is safe and is given supreme importance and value. It is for the State to ensure that persons live and behave like and are treated as human beings. Article 21 of the Constitution is a great land mark of human liberty and it should serve its purpose of ensuring the human dignity, human survival and human development. The State must strive to give a new vision and peaceful future to its people where they can coop-

erate-ordinate and co-exist with each other so that full protection of Article 21 of the Constitution is ensured and realised. Article 21 is not a 'mere platitude or dead letter lying dormant. Decomposed, dissipated and inert. It is rather a pulsating reality throbbing with life and spirit of liberty, and it must be made to reach out to every Individual within the country. It is the duty and obligation of the State to enforce law and order and to maintain public order so that the fruits of democracy can been joyed by all sections of the society irrespective of the irreligion, caste, creed, colour, region and language. Article 21 of the Constitution is an instrument and a device to attain the goal of freedom of an individual from deprivation and oppression and its violation cannot and must not be tolerated or condoned. Preamble to the Constitution clearly indicates that justice, liberty and equality must be secured to all citizens. Besides, it mandates the State to promote fraternity among the people, ensuring the decorum of the fellow and the monody and integrity of the nation. Article 38 of the Constitution also requires the State to promote welfare of the people by securing and protecting, as effectively as it may, asocial order in which justice social, economic and political, shall inform all institutions of the national life. These are the goals set by the Constitution, and Article 21 and other fundamental rights are the means by which those goals are to be attained. Therefore, it becomes the responsibility and avowed duty of the State to adopt means and methods in order to realise the cherished aims The conduct of any person or groups of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution In *Nilabati Behera* v. *State* of Orissa[16] the Supreme Court observed that it is axiomatic that convicts, deportee or under trails are not bare of their fundamental right under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by law, while the citizen is in its custody, whether he be a suspect.
Under trial or convict. His liberty is in the very nature of things circumscribed by the very fact of his confinement and, therefore, his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions.

The wrong doer is accountable and the State responsible if the person in custody of the police is deprived of his life except according to the procedure established by law. The defence of "sovereign immunity" such cases is not available to the State. There foreword of compensation would be a remedy available in a proceeding under Article 32 or Article 226 of the Constitution of India based on a strict liability or violation of fundamental rights. A person in jail does not lose his fundamental rights under Article 21 of the Constitution which requires a person to be treated

[16] *(1993) 2SCC746*

with dignity. It seems that most of the jails in our country are jungles where the security people often behave like animals in mal-treating the prisoners. It is the prime' duty of the Jail authority being custodian to provide security and safety to the life of prisoners while in jail custody, even though he is a criminal or an accused in a criminal case.

2.8.1 Death In police custody-

Entitled for monetary compensation under articles 32 and 226 of the Constitution of India:-

In Nilabati *Behera (Smt) alias Lalita Behera v. State of Orissa*[17] It was pointed out by the Apex Court as under: "A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from, and in addition to, the remedy in Private law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being in applicable, and alien to the concept of guarantee of fundamental right. There can be no question of such a defence being available in the constitutional remedy. Itis this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution.

"It was further observed:-"Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under Article 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civilsuit to claim damages for the tortuous act of the State as that remedy in private law indeed is available to the aggrieved party.

The citizen complaining of the infringement of the indefeasible right under Article 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Court sexercising writ jurisdiction. The primary

[17] ibid

source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve 'new tools' to give-relief in public law by molding it according to the situation with a view to preserve and protect the Rule of Law.

In D.*K. Basu* v. *State* of *West Bengar*[18], it· has been held by the Apex Court that compensation can be granted under the public law by the Supreme Court and the High Courts in addition to private law remedy for tortuous action and punishment to wrong doers under criminal law for established breach of fundamental rights. In *Bhim Singh vs. State* of *Jammu and Kashmir* [19] an MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs.*50,000/-* as compensation. The Court referred to *Rudal Shah*[20] *and Sebastin* M *Hongray vs. UOI*[21] *cases* and observed:

"However the two police officers, the one who arrested him and the one who obtained the orders of remand, are but minions in the lower rungs of the ladder. We do not have the slightest doubt that the responsibility lies elsewhere and with the higher echelons of the Government of Jammu and Kashmir but it is not possible to say precisely where and with whom, on the material now before us. We have no doubt that the Constitutional rights of Mr. Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this Court in *Rudal Shah vs. State of Bihar*[22] and *Sebastian* M. *Hongary vs. Union of India*[23]. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that him constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation. We consider this an appropriate case. We direct the first respondent, the State of Jammu and Kashmir to pay to Mr.Bhim singh a sum of Rs. *50,000/-* within two months from today. The amount will be deposited with the Registrar of this court and paid to Mr. Bhim Singh.

In case *of PUDR vs. Police Commissioner*[24], Delhi police head Quarters and another, is a case of labourers who were forced to work in police station without any wages. When the labourers de-

[18] *AIR 1997 SC 3017*
[19] *(1985) 4SCC677*
[20] *(1983) 4SCC141*
[21] *(1984) 3SCC82*
[22] *Supra note 42*
[23] *Supra note 43*
[24] *(1989) 4SCC730*

manded the wages they were beaten up and the women labourers were stripped of their clothes and thrashes in the police station. In this atrocity one labourer by name Rama Swarup succumbed to the injuries. On these facts the Supreme Court ordered for payment of Rs. *50,000/-* to the dependents of the deceased and the women whose clothes were stripped off was awarded Rs. *50,000/-* as compensation. Eight other labourers who were forced to work were paid Rs. 25 per day as wages.

In**,** a similar case of *Saheli vs. Commissioner of Police*[25], Delhi police Head Quarters and others, the police raided the house of one Mrs. Kamalesh Kumari . The victim was staying in a house with her three children wage 13, 9 and 7 years. The land lord of that house took the help of police to forcibly evict them from the house. During the police raid the police trample upon the nine years child of Kamalesh Kumari resulting in the death of the child. On these facts the Supreme Court ordered for payment of Rs. *75,000/-* as compensation to the mother of the deceased child.

In both above mentioned case the similar fact was that the Supreme Court ordered to succour the fund of snort money from the connected police officers.

In *charanjit Kaur vs. Union of India*[26], The court awarded Rs. 6 lakhs compensation to the wife of an army officer who died due to the negligence of any authorities.

2.8.2 Torture and death in other departments apart from police-liable compensation:-

There are other government authority as Directorate of revenue, Intelligence directorate of enforcement, coastal guard, Central reserve police force apart from police (C.R.P.F.) Border security Force (B.S. F.), the Central Industrial Security Force (C.I.S.F.) the State armed Police Intelligence Agencies like the Intelligence Bureau.R.A.W., Central bureau of Investigation (C.B.I.), C.I.D.Traffic Police, Mounted Police and I.T.B.P., which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential commodities Act, Excise and Customs Act. Foreign Exchange Regulation Act, etc. There are instances of torture and death in custody of these authorities as well. In Sawinder Singh Grover, Death of. In reo the Supreme Court took suo- motu notice of the death of Sawind-

[25] *(1990) 1SCC422*

[26] *(1994) ACJ499*

er Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional district Judge, which disclosed a *prima facie case* for Investigation and prosecution, the Supreme Court directed the C.B.I. To lodge a F.I.R. and initiate criminal proceedings against all persons named in the report of the Additional district Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay sum of Rs. 2 lacs to the dowager of the lifeless by way of ex-gratia amortization at the Antrim stage. Reform of the analogous victual of law to save the bent of grafter person in such case vastly is a genuine need.

CHAPTER-3

CUSTODIAL DEATH AND HUMAN RIGHT COMMISSION

3.1RESPONSE OF NATIONAL HUMAN RIGHT COMMISSION

The Charter of the United Nations is perhaps the most visionary document ever adopted by the nations of the world. In its scope and range, in -its prescriptions for peace and progress, it desires to propose a framework for collective security and action that is without precedent in political history. Central to that concept and to the over-arching determination contained in the premise "to save succeeding generations from the scourge of war" is the recognition that the "world should reaffirm faith in fundamental human rights" and to promote social progress and better standard of life, and greater freedom, if the world is to attain peace. Not surprisingly, the same connection is made in Article I of the Charter which asserts,*inter alia;* that one of the purposes of the United Nations is to achieve international co-operation In exalt and hopeful faith for public rights and primal Liberty for all without distinction as to people, dong, idiom or virtue. So long as the acceptance of the universal Declaration of human rights 1998 the United Nations has developed a comprehensive strategy aimed at achieving the human rights objective set out in the Charter. The basis of this strategy is the body of international rules and standards. Which now cover virtually every sphere of human activity.

Upon the strong legislative foundation has been built an extensive network of human rights machinery designed to further develop international standards, to monitor their implementation, to promote compliance, and to investigate violations of human rights. The strategy is reinforced by a wide variety of public information activities and a technical cooperation programme which provides practical help to States in their efforts to promote and protect human rights. These structures and activities permit the United Nations to play a pivotal standard-setting and leadership role in the struggle for human rights and fundamental freedoms. The task of promoting and protecting human rights, however, is not one which could or should be assumed by only one organization. United Nation practice in the field of human rights, is based on the fundamental premise that universal respect for human rights requires the concerted efforts of every government, every individual, every group and every organ in society.

However, in the past two decades many countries have become parties to the major human rights treaties, there by incurring a legal obligation to implement the human rights standards to which they subscribe at the international level. Human rights involve relationships among individuals, and between individuals and the State. The practical task of protecting human rights is, therefore, primarily a national one, for which each State must be responsible. At the national level, rights can be best protected through adequate legislation, an in dependent judiciary, the enactment and enforcement of individual safeguards and remedies, and the establishment and strengthening of democratic institutions. Activities aimed at the promotion of human rights and the development of human rights culture should also be viewed as primarily national Responsibilities. The most effective education and information campaigns, for example, are likely to be those which are designed and carried out at the national or local level which takes the local cultural and traditional context into account.

When States ratify a human rights instrument, they either incorporate its provisions directly into their domestic legislation or undertake to comply in other ways with the obligations contained in the instrument. Therefore, universal human rights standards and norms today find their expression in the domestic laws of most countries. Often, however, the fact that alaw exists to protect certain rights is not enough if that law does not also provide for all the legal power and institutions necessary to ensure the effective realization of those rights.

This problem of effective implementation at the national level has, in recent times, generated a great deal of international interest .1 and action. The emergence orreemergence of domestic rule in many countries has focused attention on the importance of democratic institutions in safeguarding the legal and political foundations on which human rights are based.

It has, therefore, become increasingly apparent that the effective enjoyment of human rights calls for the establishment of national infrastructure for their promotion and protection. **In** recent years, many countries have established institutions with the express function of protecting human rights. While the specific tasks of such institutions may vary considerably from country to country, they share a common purpose, and for this reason are referred to collectively as national human rights institutions.

3.2 Establishing standards and goals for Human Rights Institution.

The question of national human rights institutions was first discussed by the Economic and Social Council (ECOSOC) in 1946, two years before The common legislature proclaimed the pronouncing of human rights as a usual rust of cognition that all peoples and all nations". At its second session, in 1946, ECOSOC invited member States "to consider the desirability of establishing information groups or local human rights committees in furthering the work of the Commission on Human Rights. Fourteen years later the matter was raised again, in a resolution which recognized the commodious role that racial consecration could play in the pronation and conservancy of human rights, and which invited governments to encourage the formation and continuation of such bodies as well as to communicate all relevant information on the subject to the Secretary-General of the United Nations.

As standard-setting in the field of human rights gained momentum during the 1960s and 1970s, discussions on national institutions became increasingly focused on the bodies could assist In the effective implementation of these international standards. In 1978, the UN Commission on Human Rights decided to organize a seminar in order, *inter alia*, to draft guidelines for the structure and functioning of national institutions. Accordingly, the seminar on National and Local Institutions for the Promotion and Protection of Human Rights was held in Geneva in September1978 which approved a set of guidelines. These guide lines suggested that the functions of national institutions should be:

(i) To act as a source of human rights information for the government and people of the country;
(ii) To provide assistant in education to the public on and promoting them awareness of and respect for human rights;
(iii) To consider, deliberate upon, and make recommendations regarding any particular state of affairs that may exist nationally and which the government may wish to refer to them;
(iv) To advise on the questions regarding human rights matter referred to them by the government;
(v) To study and keep under review the status of legislation, judicial decisions and administrative arrangements for the promotion of human rights, and to prepare reports on the smatters to the appropriate authorities;
(vi) To perform any other function which the government may wish them to carry out in connection with the duties of the State under those conference tool in the arena of human rights to which it is a party.

As regards the structure of such institutions, the guidelines recommended that they should

(a) Reflect in their composition wide cross sections of the nation, there by bringing all parts of the population into the decision-making process in regard to human rights;
(b) Function regularly, and that immediate access to them should be available to any member of the public or any public authority;
(e) In appropriate cases, have local or regional advisory organs to assist them in discharging their functions.

The guidelines were subsequently endorsed by the Commission on Human Rights and the General Assembly. The Assembly invited the States to take appropriate steps for the establishment, where they did not already exist, of racial conference for the promotion and conservancy of human rights, and requested the Secretary-General to submit a detailed report on existing national institutions. Throughout the 1980s, the United Nations continued to take an active interest in this topic and a series of reports prepared by the Secretary-General was presented to the General Assembly. It was during this time that a considerable number of national institutions were established-many with the support of the United Nations Centre for Human Rights. In 1990s, the Commission on Human Rights called for awork shop to be convened with the participation of national and regional institutions involved in the promotion and protection of human rights. The workshop was to review patterns of co-operation between national institutions and international organizations, such as the United Nations and its agencies and to explore ways of increasing the effectiveness of national institutions. Accordingly, the since international workshop on racial conference for the promotion and defence of human right held in Paris from 7th to 9th October, 1991. Its conclusions were endorsed by the Commission on Human Rights in Resolution *1992/54* as principles relating to the status of national institutions ("the Paris Principle"), and subsequently by the Genera! Assembly in its resolution *48/134* of 20th December, 1993. The principles affirm that national institutions are to be vested with competence to promote and protect human rights and given as broad mandate as possible, set forth clearly in a constitutional or legislative text. According to these principles, which represent a refinement and extension of the guidelines developed in 1978, a national institution shall have the following responsibilities: To submit recommendations, proposals and reports on any matter relating to human rights including legislative and administrative provisions and any situation of violation of human rights to the government, parliament and any other competent body;.

(i), To promote conformity of national laws and practices with international human rights standards;

(ii) To contribute to the reporting procedure under international instruments;
(iii) To assist in formulating and executing human right teaching and research programmers and to increase public awareness of human rights through information and education;
(iv) To co-operate with the United Nations, regional institutions, and national institutions of other countries.

The principles also recognized that a number of national institutions have been given competence to receive and act on individual complaints of human rights violations. They stipulate that the functions of national institutions in this respect may be based on the following principles:-
(a) Seeking an amicable settlement of the matter through conciliation, binding decision or other means;
(b) Informing the complainant of his or her rights and of available means of redress, and promoting access to such redressals, hearing complaints or referring them to competent authority;
(c) Making recommendations to the competent authorities, including proposals for amendment of laws, regulations or administrative practice which obstruct the free exercise of rights.

Broadly speaking, on the lines of the aforesaid international guidelines, a considerable number of human rights commissions 10ns have been set up in different parts of the world. “These institutions have a very unique role in translating international human rights standards into reality, and giving them a local flavour and acceptability without diluting their essential universal characteristics. In view of such considerations, it would be worthwhile here to 'highlight· an overview of the nature, composition and functioning of the existing national commissions meant for the promotion and conservancy of human rights.

3.3 Establishment of the National Human Right Commission

The present struggle for human rights in India has it antecedents during the colonial rule but it became intense and full-fledged in emergency period as imposed by Indira Gandhi in between 1975·77. During this phase the contemporary moral standards of India's democratic norms stood as particularly a moral due to the increasing weakness in the professional efficiency of the 3tate apparatus, the bureaucracy, political parties, the Judiciary and the media. As a result some of the important events such as the demand for restoration of civil and democratic rights, the demand for regional autonomy, restructuring of the State apparatus and the emergence of various civil and democratic rights organizations provided the institutional base of this *movement.* The establishment of the NHRC as governmental machinery is a just supplement of it.

3.3.1. Brief History of the Commission

The history of the establishment of a Human Rights Commission in India can be traced back to pre-independence era when the national liberation struggle was stirring up against British tyranny. Civil Liberties Union, the first human rights organization in the country was formed by Jawaharlal Nehru and some of his colleagues in early 1930s. The main objective of the organization was to collect information on violation of human rights and to provide legal aid to nationalists who were accused of sedition against the authorities. It was successful in creating consciousness among masses. The Madras Civil Liberties Organization was formed in 1947 which undertook similar activities in Madras. Following the ban on Communist Party of India, a nation-wide repression took place, particularly in Calcutta, which led to the birth of Civil Liberties Committee in 1948. The real emergence of human rights organizations took place in 1960s when both the privileged social classes and the government systematically cracked down on groups fighting for the rights of the traditionally oppressed people. In 1972, the Association for Protection of Democratic Rights (APDR) was formed in Calcutta and in 1974, the Andhra Pradesh Civil Liberties Committee (APCLC) was formed. Both the organizations were limited by their fragmented and sectarian nature, coupled with the in difference of the media and public to the plight of marginalized sections of the society .However, their main task was to highlight the grow in repression and exploitation in the country side and played a crucial role in confronting and exposing the coercive action of the State.

During the emergency period (1975-77), a major agitation against the growing authoritarianism of Indira Gandhi, the then Prime Minister of India, further widened the scope for thee establishment of human rights organization in the country. With the active initiative of Java Prakash Narayan, the People's Union for Civil Liberties and Democratic Rights (PUCLDR) was formed in 1975. In the subsequent phase, the PUCLDR was split in 1980 into two groups-PUDR and PUCL. During the post emergency era, a number of human rights organizations such as the Civil Liberties and Human Rights Organizations (CLAHRO) in Manipur, Citizens for Democracy (CFD) in Delhi, the Committee for the Protection of Democratic Rights (CPDR) in Bombay, the Free Legal Aid Committee (FLAC) in Bihar, the J & K Peoples Movement for Human Rights and many other have been formed for this cause. Though these organizations greatly differ in their structure and *modus operandi,* their activities are more 01 less similar with regard to the promotion and protection of human rights. Fact-finding mission and investigation, public interest litigation, citizen's awareness programme, campaigns, the production of supportive literature for independent movements and organizations were some of the important activities of these organi-

zations. Their main concern is to create an atmosphere where a harmonious state civil society interaction could be possible.

The first political initiative to set up a Civil Rights Commission took place as early as 1977 in the election manifesto of Janata Party. It was proposed to be independent and autonomous, and was to be headed by a person equal to the status of a judge of the Supreme Court, who would be competent to ensure that minorities, the Scheduled Castes and Scheduled Tribes and other backward classes did not suffer from discrimination and inequality. The purpose of setting up of the Civil Rights Commission had been mooted to fulfil the party's promise made in the election. It was also felt that with the setting up of the commission, the key offices of the Commissioners of Scheduled Castes and Tribes and the Commissioners of Linguistic Minority would become redundant. Those offices would be wound up and their responsibilities entrusted to the proposed Commission. The setting up of such a Commission had been thought of mainly because of the lack of sufficient powers and inadequate status of the offices of the Commissioners of Scheduled Castes and Tribes and the Minorities. In early 1983, the Minorities Commission had recommended to set up a comprehensive National Integration cum-Human Rights Commission and urged the government to make a constitutional provision for it. In 1985, the then Chief Justice of India, P.N. Bhagwati, had suggested for a National605Human Rights Commission. In 1986, the Civil Liberties activists in the country planned to form a Human Rights Tribunal comprising mainly of former judges to investigate violations of human rights. The creation of a Human Rights Commission in each state and at the national level was suggested by L.M.Singvi, an eminent jurist, in March 1988. He advocated for the need of a constructive, positive and participative mass movement for human rights and human obligations.

3.3.2 Need for Setting-up of the NHRC

The decision by the Government of India to set up a human rights panel did not come a day soon. A host of factors led the government to think in terms of setting up of a statutory and recommendatory body on human rights. The issue had been under active consideration for some time at the appropriate official levels. After considered thought government had announced its intention to prepare a legislation to serve as a basis for such a Commission. The issue assumed urgency in the context of alleged violation of human rights in certain States like J & K, Punjab and Assam. However, some of the important factors which led to the formation of NHRC are as follows:

Over the past several years, India has been severely criticized by Amnesty International, Asia watch and International Red Cross for alleged violations of human rights by the

police and security forces in most sensitive areas such as Punjab, Kashmir, Assam and Andhra Pradesh. These violations include custodial deaths, illegal confinement, police brutalities, rate and other heinous crimes. Denial of permission these reputed international bodies to study and assess our human rights record has created suspicion in the minds of such organizations about the sincerity of our commitment to uphold human rights. The denial to these organizations to visit the sensitive areas was backed by the reasons that it might be prejudicial to the security of the State and hamper the work of restoring peace and tranquillity which has been adversely criticized on account of the absence of any plausible reasons. In order to avoid such criticisms reports made by these organizations, the government decided to set up a native agency to examine its own human rights records.

The charges of violations of human rights In India are being raised primarily with the incidents of torture, rape and deaths in police custody, and in human and degrading treatment of prisoners. Apart from this, rampant violations of human rights arise out of the poor socio- economic conditions of our people, particularly people belonging to the most vulnerable sections members of the Scheduled Castes and Scheduled Tribes, migrant workers and landless laborers. Such violations occur due to the country's scarce resources and other problems like poverty, malnutrition, mounting unemployment, illiteracy, unbearable and. unhygienic conditions in the slums, and lack of primary health care in the rural areas and a horde of other problems including violence, terrorism and outrageous incidents of communal riots. Taking all these into account, it seems that our commitment to human rights is a mere catchy slogan pronounced at public meetings, conferences and seminars. There is, therefore, a need to establish a fact-finding body to recommend ways and means to the Government/ authority to prevent such violations.

The growing concern for the promotion and protection of human rights issues both at national and international level could be a probable reason for the Central Government to think in terms of establishing a human rights commission in India. The increasing concern being made about human rights, a real threat has been anticipated in the form of link between economic assistance and human rights conditionality's. The USA and UK are not the only Western countries which have been expressing their concern over the violations of human rights in India, but other donor countries like Sweden, Norway, France and Switzerland have also expressed their concern in this regard. They have been influenced by a number of international non-governmental organizations, notably Amnesty International and Church bodies. They acknowledge that there have been instances of arbitrary killings of civilians by terrorist groups in Kashmir and hence stress the point that higher standards are expected from the government officials who are trusted to uphold and protect basic rights of people. Another consideration for the introduction of human rights com-

mission bill could be analysed in the light of Kashmir issue. Pakistan has a long-standing demand to sponsor resolution recommending the visit of a fact-finding mission to J & K to investigate alleged violations' of human rights by the police and other security forces. This issue has been raised at various international conferences and has become more in ten particularly in the World Conference on Human Rights at Geneva on 3rd March, 1993.

In its proposal for "Co-operation, Agreement on partnership and Development with India (1993)", the EC has inserted a clause which states that respect for human rights and democratic principles is the. Basis for the co-operation between the contracting parties which constitutes a key element to this agreement. Prior to it, the EC had also emphasized on a resolution on Human Rights, Democracy and Development in. 1991. In this resolution, the EC had made the Insertion of human rights clauses compulsory in the economic and co-operation agreement between the EC and its member States and developing countries. Towards this end, India has recently received an annual aid of about $ 100 million to $ 150million for specific projects from the EC. With regard to violations of human rights in India, the European Parliament had also passed a resolution on heightened tension in J & K State in 1992 in which it condemned all acts of terrorism and repression and abuses of human rights and stressed the point that such acts may influence ECs relations with India and Pakistan. As a party to the Agreement, India had to perform its obligation to fulfil these conditions/clauses imposed by the EC members.

The various rulings of the Supreme Court, High Courts, there ports of the Law Commission, the National Police Commission and the reports of independent observers have made clear that the immediate need for amending relevant sections of the Code of Criminal Procedure and the Indian Penal Code are necessary. The amendments suggested that it would shift the liability of proof on the police officials in case there is that injury caused while in custody, mandatory Judicial enquiry in case of death or disappearance in custody, post-mortem within 24 hours, and medical examination in case of all allegation of rape, So the proposed Human Rights Commission may be of useful instrument in this regard. The need for bringing a central legislation providing for mandatory financial compensation to the victims of custodial crimes is long overdue. Thus, by adopting a three-pronged strategy-first, the establishment of human rights commission, second, amendment of the existing administrative law on crime, and third, a central Legislation for compensation for the victims of custodial crimes-India Can fulfil its international obligations and live up to the constitutional mandate. Another point of observation is that the judicial process in India is very slow. It often takes years for a case to be decided. The courts are\clogged with cases, hence there is a great backlog of pending cases. Besides the technicalities of procedure make it a case of 'justice delayed hence justice denied' .So the proposed Commission could be another re-

dressal mechanism for the promotion and protection of human rights in a more systematic way. Despite the criticisms labelled against India by human rights organizations, "the world community, by and large, perceives India as a stable democracy with an independent judiciary, vibrant legislature and a vigilant press. It is, therefore, incumbent upon us to uphold India's image at home and abroad by establishing an independent and investigatory watch dog body on human rights" As discussed earlier, many countries like Canada, Australia, Mexico, Algeria, Northern Ireland, Japan, Surinam, Nicaragua and The Philippines have set up human rights commissions in their respective countries. So it is clear from the available indications that our country should have a Commission similar to those countries. The Commission so set up can have Indian laws and conditions, and can function in coordination with the existing Commissions meant for safeguarding the rights of the Scheduled Castes and Scheduled Tribes, women and the minorities. Taking all these points into consideration, the Government of India introduced the Human Rights Commission Bill in the Lok Sabha on 14th May, 1992. The Bill was referred by the Speaker to the Standing Committee of Parliament on Home Affairs. In view of the urgency of the matter, the Protection of Human Rights Ordinance, 1993 was promulgated by the President on 28th September, 1993. After incorporating certain amendment shaving regard to the discussions in the said Standing Committee and to replace the rescript the defence of human right bill was passed by both the house of the parliament and it came on the Statute Book as the Protection of Human Rights Act, 1993 (10 of 1994). Committee was integrated on 12 October 1993 under the protection of human rights ordinance of 28

3.3.3 Objectives of The Protection of Human Rights Act,1993.

The main objectives of the Act is to provide for the constitution of the National and State Human Rights Commissions and Human Rights Courts for better protection of human rights and for matters connected there with or incidental thereto. Thus, it has a twin objective to fulfill, namely, establishment of institutional structure, both at Centre and State levels, and to create enforcement machinery in terms of human rights courts for better protection of human rights.

3.4 Structure of the National Human Rights commission.

3.4.1. Constitution of a National Human Rights Commission

The Central Government shall constitute a body to beknown as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.

The Commission shall consist of:

A Chairperson who has been a Chief Justice of the Supreme Court; One Member who is or has been, a Judge of the Supreme Court; One Member who is, or has been, the Chief Justice of a High Court; Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. The Chairperson of the National Commission for Minorities, [the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes] and the National Commission for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to(j) of section 12 .There shall be a Secretary-General who shall be the Chief Executive Officer of the Commission and shall exercise such powers and discharge such functions of the Commission 2[except judicial functions and the power to make regulations under section 40 B], as may be delegated to him by the Commission or the Chairperson as the case may be. The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

3.4.2 Appointment of Chairperson and other Members

The Chairperson and [the Members] shall be appointed by the President by warrant under his hand and seal; Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

The Prime Minister - Chairperson

Speaker of the House of the People - Member

Minister in-charge of the Ministry of Home Affairs in the Government of India - Member

Leader of the Opposition in the House of the People - Member

Leader of the Opposition in the Council of States - Member

Deputy Chairman of the Council of States - Member

(1) Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy of any member in the Committee referred to in the first proviso to sub-section (1).

3.4.3. Resignation and removal of Chairperson and Members

The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.

Subject to the provisions of sub-section (3), the Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehaviour or in capacity after the Supreme Court, on reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member, as the case maybe, ought on any such ground to be removed. Not with standing anything in sub-section (2), the President may, by order, remove from office the Chairperson or any Member if the Chairperson or such Member, as the case may be-Is adjudged an insolvent; or Engages during his term of office In any paid employment outside the duties of his office; or Is unfit to continue in office by reason of infirmity of mind or body; or Is of unsound mind and stands so declared by a competent court; or Is convicted and sentenced to imprisonment for an offence which in the opinion of the President involves moral turpitude.

3.4.4. Procedure to be regulated by the Commission

The Commission shall meet at such time and place as the Chairperson may think fit. Subject to the provisions of this Act and the rules made there under, the Commission shall have the power to lay down by regulations its own procedure. All orders and decisions of the Commission shall be authenticated by the Secretary-General or any other officer of the Commission duly authorised by the Chairperson in this behalf.

3.4.5. Functions of the Commission

The Commission shall perform all or any of the following functions, namely:-
(a) Inquire or a petition presented to it by a victim or any person on his behalf or an a side or order of any court into accusation of
(i) Infraction of human right
(ii) Negligence in the prevention of such violation, by a public servant;
(b) Intervene In any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates there of and make recommendations there on to the Government;

Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; Review the factors, including acts of terrorism that inhibit then joyment of human rights and recommend appropriate remedial measures; Study treaties and other international instruments on human rights and make recommendations for their effective implementation; Undertake and promote research in the field of human rights; Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; Encourage the efforts of non-governmental organisations and institutions working in the field of human rights; Such other functions as it may consider necessary for the protection of human rights.

3.4.6. Powers relating to inquiries

(1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely: Summoning and enforcing the attendance of witnesses and examining them on oath; Discovery and production of any document; Receiving evidence on affidavits; Requisitioning any public record or copy thereof from any court or office; Issuing commissions for the examination of witnesses or documents; Any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish

information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies there from subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable. The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973. Every proceeding before the Commission shall be deemed tobe a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXV of the Code of Criminal Procedure, 1973.(3) Where the Commission considers it necessary or expedients to do, it may, by order, transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act; Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

3.4.7. Investigation

(1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.

(2) For the purpose of investigating into any matter pertaining to the inquiry, any of-

ficer or agency whose services are utilised under sub section (1) may, subject to the direction and control of the Commission:-

(a) Summon and enforce the attendance of any person and examine him;

Require the discovery and production of any document; and Requisition any public record or copy thereof from any office. The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission. The officer or agency whose services are utilised under subsection(1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf. The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

3.4.8. Inquiry into complaints

The Commission while inquiring into the complaints of violations of human rights may-

(i) Call for information or report from the Central Government Oran State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that-

If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own; if, on receipt of information or report, the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly;

(ii) Without prejudice to anything contained in clause (i), if it considers necessary, having regard to the nature of the complaint, initiate an inquiry.

3.4.9. Procedure with respect to armed forces

(1) Notwithstanding anything contained in this Act, while dealing with complaints of violation of human rights by members of the armed forces, the Commission shall adopt the following procedure, namely :-

(a) It may, either on its own motion or on receipt of a petition, seek a report from the Central Government; after the receipt of the report, it may, either not proceed with the complaint or, asthe case may be, make its recommendations to that Government.

The Central Government shall inform the Commission of the action taken on the recommendations within three months or such further time as the Commission may allow. The Commission shall publish its report together with its recommendations made to the Central Government and the action taken by that Government on such recommendations. The Commission shall provide a copy of the report published under subsection (3) to the petitioner or his representative.

3.5 State Human Rights Commission.

Since India is a vast country and it will not be possible for the affected to move National Human Rights Commission at Delhi without considerable amount of time and money. State Human Rights Commissions are being set up all over India to supplement the efforts of National Human Rights Commission. The Protection of Human Rights Act, 1993 envisages the setting up of the State Human Rights Commissions because, being nearer to the people of the respective states, they should be able to provide speedier and less expensive redressal of grievances. The national Human Rights Commission, for its part, has therefore been urging the early establishment of State Human Rights Commissions in all the states. Successive Chairpersons have, accordingly, both written to and spoken with the Chief Ministers of states impressing on them the need to setup Human Rights Commissions. On 1st August 2009. The position was follows.

State Human Rights Commissions had been established in 18(Eighteen) states. The National Human Rights Commission meanwhile has continued to hold meetings with the chairpersons and members of existing state Human

Rights Commissions with a view to developing healthy conventions in the functioning of various commissions and to ensure that, in their effort to promote human rights in the country, they work together smoothly and to the maximum bene fit of all the people of this country. The National Human Rights Commission has observed once again, that it is disappointed with the slow pace of state governments acting to constitute State Human Rights Commissions. It has also noted that not all the State Human Rights Commissions that have been established are being appropriately supported through the provision of adequate financial and man power resources. It strongly recommends, that those state governments, which have not yet constituted Human Rights Commission do so at the earliest and that, wherever such commissions have been constituted, they be provided the backing that is essential to their proper functioning. Thus, the momentum is picking up and National Human Rights Commission is lending its full support to the process.

3.5.1. Human Rights Courts

Human Rights courts are being set up all over India. To associate public and Non-Governmental Organisations in the process of verifying allegations of violations, District Level Enquiry Committee are being set up. National Human Rights Commission is the first step to translate Human Rights rhetoric into tangible action. India has truly joined the advanced nations in implementing human rights in letter and spirit. In a country of continental dimensions with great diversity of language, traditions, customs and practices, it will be unrealistic to expect overnight change in attitudes congenial to the enjoyment of human rights.

3.5.2 Custodial Death and The National Human Rights Commission

The NHRC may, after completing an inquiry, recommend that the responsible Government or authority grant immediate relief to the victim or the members of his family. The Commission has held that "the instantly interim assistance presumed under section 18(3) of the act has to refer in particular to the harm/ damage

Suffered as a result of the human rights violation, and that this will not absolve the State of its liability for compensation." The NHRC noted that: "... for the purpose of award of compensation, substantiation on mere preponderance of probability, on the standard of civil evidence is sufficient. Even where a criminal charge may fail for want of evidence

sufficient by standards requisite in criminal cases, yet a case of compensation can be sustained on a mere preponderance of probability." In another case, the NHRC held that "This provision (18 (3) of the Protection of Human Rights Act, 1993) has been generously operated and the power conferred under it is widely exercised by the Commission undeserving cases. The Commission has in this connection kept itself alive to the spirit of various United Nations instruments. “While the State Government in question is obliged to pay compensation, the Commission has in several cases recommended the concerned Governments to recover the amount paid from the responsible public official. The NHRC also has the power to approach the High Court or Supreme Court for an order directing the responsible public body or person to pay the specified compensation. On perusing the report, the Commission directed that no further action by it was necessary. The investigation earlier ordered u/s 14 of the Act was accordingly dropped.

Chapter-4

Law and Custodial deaths in India

Data shows that between 2001 to 2018, 1,727 persons have died in police custody (including those in judicial remand) and those who have been arrested but not yet produced before the court. On average, 96 persons die in custody every year. According to the India Annual Report on Torture 2019, there were a total of 1,731 custodial deaths in India. Out of those, 1,606 people died under judicial custody and 125 people died under police custody. This works out to almost five such deaths daily. The report highlights the most common forms of torture which include electric shock, hammering nails in the body, applying chilly power on different parts of the body, branding with a hot iron, inserting rods in the parts of the body, forcing legs apart, hanging upside down and merciless beating, etc. These are some of the horrific treatments the person who dies in custody often goes through. Most of these people belong to the oppressed classes who are not economically and socially empowered to fight the atrocities of the police. The report indicates that Uttar Pradesh has the dubious distinction of most custodial deaths with 14 out of 125 cases, followed by Tamil Nadu with and Punjab, both recording 11 deaths. What is most disconcerting is that about 75% of these 125 deaths happened due to alleged torture or foul play, and about 20% died under suspicious circumstances that police cited suicide. The most recent of such dreadful incidents happened in the state of Tamil Nadu. P Jeyaraj (58) and his son Benicks (38) were taken into police custody after allegedly keeping their shop open during lockdown past the permitted hours. They were manhandled on spot and taken to the police station where they were tortured. Both died after two days. The incident sparked widespread outrage on social media which led the local courts to launch an investigation. The Court ruled that the officers involved in the incident would be charged with murder. The details of the torture shook the whole nation and debates on police brutality and the use of excessive force gained momentum after that. This also happened about a month after the sensational death of George Floyd. Floyd was a 46-year-old black American who was arrested for allegedly using a counterfeit bill; he was pinned down on the street by the officers who came to arrest him and within a few minutes of him begging to let him breathe, he lost his life. This sparked massive record-breaking protests across America and the whole world. In another recent police encounter case Vikas Dubey, a gangster turned politician based out of Kanpur was shot in an alleged ambush with the police. As per version of the police report, the vehicles carrying him overturned and he tried to escape and also tried to

shoot the policemen on duty. This again sparked nationwide debates on whether the encounter was staged and it was a custodial murder.

4.1 Legal provisions against custodial torture in India

The Indian Constitution and the legal regime provide various safeguards against 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 the 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. Thus the article prohibits the framing of ex-post-facto criminal laws and also prohibits the infliction of any penalty greater than that which can be inflicted under the law in force at the time of the commission of the offence. In a nutshell, the article prohibits the creation of a new offence with a retrospective effect. Protection against Double Jeopardy: Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once. Right not to be a witness against himself: Article 20(3) of the Constitution provides that no accused person will be compelled to be a witness against himself. This is very important as it acts as a safeguard in obtaining evidence from the accused through coercion and torture. Interestingly under Section 179 of IPC, every person is legally bound to state the truth on any subject to a public servant. Section 161 of the Code of Criminal Procedure, 1973 also enables the police to examine the accused during an investigation. But on the other hand, if any pressure, subtle or crude, mental or physical, direct or indirect, yet substantial, is applied by the police for obtaining information from an accused it becomes 'compelled testimony', and violates Article 20(3). The prohibitive sweep of this article functions in this manner and acts as a safeguard for the accused. This issue came up for discussion in the *Nandini Satpathi case.* Section 163 of the Code of Criminal Procedure, 1973 prohibits the investigating officers from making any inducement, threat or promise under Section 24 of the Indian Evidence Act (1872) but also prevents him from forcing any person to make any statement which he would like to make on his free will. Section 24 of the Indian Evidence Act, 1872 makes all confessions made under inducement, threat, or promise as inadmissible. The section gives the accused the right not to make any confession against his will as it is well understood that if such evidence is made admissible, it will act as a trigger for the police to use torture and force to extract evidence against him. Section of the Code of Criminal Procedure, 1973 provides for recording and signature of confessions in proper manner and endorsement of the confession by a magistrate to the effect that it has been made voluntarily. This right against self-incrimination is in

tune with Article 14(3) (g) of the International Covenant on Civil and Political Rights which calls on the member states to ensure that the accused is not compelled to testify against himself or to confess guilt.

Section 348 of Indian Penal Code, 1860, among others, lays down provisions relating to wrongful confinement and prohibits such confinement for extorting any confession or information for detecting any offence or misconduct. Such wrongful confinement has been made a punishable offence with imprisonment up to three years is also liable for fine.

Similarly Sections 25 and 26 of the Indian Evidence Act, 1872 provide safeguards to the accused on the same lines. Section 25 states that no confession made to a police officer can be used to prove any offence against him. Section 26 makes all confessions made during custody inadmissible unless made in the immediate presence of a Magistrate. However, Sction 27 of the act provides an exception to Section 25 to the extent that a statement made in custody may be admissible if it leads to the discovery of some new fact. In this regard, the Supreme Court has however pointed out that the accused, if forced to give a confession under this section, can use his privilege against self-incrimination contained in Article 20(3) of the Constitution. However, this is a debated issue and many legal experts claim that such protection does not exist in practice, as it is extremely difficult for the accused to prove that his confession was extracted through compulsion.

Article 21 of the Constitution of India **(Right to Life and Personal Liberty**) does not expressly say anything against custodial torture but its ambit is quite extensive. This right states that no person shall be deprived of life or personal liberty except according to the procedure established by law. The right includes constitutional guarantee against torture, assault, or injury and thus acts as a safeguard against custodial torture and violence. In *Maneka Gandhi vs. Union of India (1978)*, the Supreme Court, expanded the scope and ambit of Article 21 of the Constitution, emphasising that this right is not confined merely to physical existence but also includes the inherent right to live with dignity. Again in *Inderjeet v. State of Uttar Pradesh (2014)*, the Supreme Court held that punishment which has an element of torture is unconstitutional. In *Pram Shankar Shukla v. Delhi Administration (1980)*, the Supreme Court ruled against compulsory handcuffing of prisoners observing the practice to be prima-facie inhuman and laid down certain guidelines in this regard. Right of Privacy: In the recent judgment of the Supreme Court in *K. S. Puttaswamy vs. The Union of India*, the Supreme Court ruled that the right to privacy is a fundamental right covered under the right of life and liberty. Before this, in *Kharak Singh v. State of U.P. (1962)*, It

held that life is not just mere animal existence, there is a lot more to it. The judgment in the Puttaswamy judgement is a landmark one as it reiterates the 'right to be left alone', which is an integral part of personal dignity. This thus includes the right against bodily violation, one which the State cannot claim immunity against. It is interesting to note that the judgement did not specifically state that the right to privacy includes the right against torture, it is very easy to understand that both are basic fundamental rights which are closely related. However much before this, in *Francis Coralie Mullin vs. The Administrator, Union (1981)* the Supreme Court held that Article 21 includes the right to protection against torture. Right to be informed of the Ground of Arrest: Article 22(1) of the Constitution of India gives the arrestee the right to receive information on the grounds of his arrest and also gives him the right to consult a legal practitioner of his choice to defend him.

Section 50 of the Code of Criminal Procedure, 197, provides a similar right to the arrested person and also gives him the right to seek bail. Section 49 of the Code of Criminal Procedure, 1973 is also a safeguard against custodial excesses. It states that an arrested person shall not be subjected to more restraint than is necessary to prevent his escape. Section of the Code of Criminal Procedure, 1973 makes it incumbent upon the police to give required information relating to the arrest of a person, including the place of arrest to his friends, relatives, or any such person nominated by the arrestee.Section 55A of the Code of Criminal Procedure, 1973 makes it mandatory for the person under whose custody, the accused is detained to care of the health and safety. Section 75 of the Code of Criminal Procedure, 1973 provides for disclosing the substance of the warrant to the arrested person and even showing it to him, if required.Article 22(2) of the Constitution of India provides the arrested person with the opportunity of a quick trial. Any arrested person has to be produced before the nearest magistrate within a period of twenty-four hours of such Any further detention needs the approval of a magistrate. This right thus allows him to seek release on bail, disclose his grievances, if any, arising out of any mistreatment meted out to him in custody and an independent probe of the legality of his detention. Section 56 and Section 57 of the Code of Criminal Procedure, states in detail about these rights (production of the detained person before a magistrate and detention for an unreasonable period and in the absence of a special order of a magistrate) Section 167(2) of the code also makes it incumbent upon the said magistrate to authorize further detention of the accused, only if he has been produced before him in person for the first time. Penal provisions for injury, torture, or death on the body of a person in custody are provided in the country's Substantive law (Indian Penal Code, 1861). It is pertinent to mention here that provisions relating to rape under Section 376 have been amended to specifically address rape in custody by insertion of Section 376(2) in the Criminal Law

(Amendment) Act, 1983. Vide this amendment, punishment for rape committed on a woman in custody by a police officer, a public servant, a member of a correctional home, or a hospital staff has been enhanced to a minimum of 10 years, as against 7 years in respect of other cases of rape.

4.2 Critical analysis of reasons for rise in custodial death

The reasons for the rise in custodial deaths are manifold. It is the responsibility of the police to look after the health and safety of a detained person under custody. The Human Rights Commission must be informed within 24 hours in the case of custodial death and 48 hours in an encounter killing. According to the National Crime Records Bureau (NCRB), there was an increase of 9% from 92 in 2016 to 100 in 2017 in custodial deaths. 2018 prison reports of the NCRB state that a total of 1,639 people died of 'natural causes', 149 from 'unnatural causes', and the rest from 'unknown causes' because some of the states were not keen on divulging the details. The report thus divides itself in mainly two categories; natural and unnatural death but there is often nothing natural about these deaths and the unnatural deaths are because of the incompetence of the state and judicial facilities. They fail to provide proper healthcare and security to the prisoners. Suicide is one of the biggest reasons for custodial deaths. It is a matter of debate how many of these are actual suicides and in how many cases, the victims were forced to commit suicide due avoid further torture and violence. In India, there are no adequate provisions for inmates and under-trials seeking psychiatric help and this affects their mental health greatly. Thus it is imperative that they should have better access to psychological support and better preventive measures must be implemented. Proper security of inmates should be one of the top concerns of reformers and policymakers. A lot of attacks happen inside the prison between inmates which often prove to be fatal. A person under custody loses most of his rights including the right of free movement and the right to choose their preferred medical care. This adds to their mental agony. It is the responsibility of the state authorities to take care of their physical and mental disabilities and respond properly to their needs. Custodial deaths that happen because of police brutality are perhaps the most important reason for the increase in numbers. The police are empowered by the state to enforce laws and maintain public order and security. They do not have the right to take the law in their hands as they please. Torturing an accused or a detainee is a gross violation of the powers bestowed on them. But it is increasing over the years. The recent custodial deaths which took place in Tamil Nadu are not an isolated event, it is the result of the systematic nonchalance and normalisation of using disproportionate force in the line of duty. We live in civil society and a lot of us are aware of our rights and responsibilities yet horrific incidents as these

continue to take place. Section 49 of CrPC accords a list of rights to an arrested person. It is explicitly mentioned in there that the use of force while detaining a person should not be more than it is necessary to stop them from escaping. This is hardly followed. Finally, it has to be said that there are a lot more cases that do not get reported. Only a few make it to the annual reports, others get buried under administrative cover-ups.

CHAPTER-5
CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

The most important thing to do to help stop torture is simply to speak out against it. This applies especially in countries in which it occurs, but outsiders can do a lot as well. Campaigns by Amnesty International and other human rights groups do have an impact. Unfortunately, most people are simply by standers. Many have an unconscious belief that if people are tortured, then they must be guilty of something. This is certainly not the case. Many victims who are caught up in torture systems do not even know what they did and why they are there. In any case, torture can never be justified in any humane society. Remedies and sanctions thus affirm, reinforce, and reify the fundamental values of society. More often than not, governments officially renounce torture but this is not the reason to be complacent because in most cases, there announcement is a mere lip service. Torture is unpleasant even to think about, but it deserves much more attention. System torture is fostered and perpetuated by actors and organization inside and outside the torture environment. For instance, the direct perpetrators of Abu Ghraib torture guards and some interrogators, government and private persons could not have serially tortured without a range of facilitators who provided organizational, technical, legal, and financial support for their violence. In the immediate torture environment, facilitator included translators, medical doctors, nurses, medics, guards, and dog handlers, among others. In addition, the torturer include heads of state, their ministers, ambassadors, lawyers, and heads of departments, to name a few. It must be emphasized that facilitators are even more essential to the long-term stability of a torture system than its more visible direct perpetrators. For instance, Martha Ketal assert that "torture during Brazil's military period could not have persisted for over twenty years without the active and passive complicity of facilitators." This is as true for the US and other liberal democracies. One of the numerous steps to stop torture is for the State to accept that it needs to take upon itself the task of prevention. Effective prevention requires intervention to protect those at risk. Rarely can this be done on an individualised basis, though if a specific risk is known, that risk can be averted. The key to preventing torture lies in accepting the need to put in place mechanisms that can lessen the likelihood of torture and ill-treatment from occurring. All law enforcement officials must be accountable to independent judicial and disciplinary authorities. This must be coupled with a combination of independent and internal oversight and complaint mechanisms that undertake regular visits to places of detention. At times these mechanisms and procedures can appear

onerous, and, may hamper the work of law enforcement agencies in doing their difficult but vital tasks. The ultimate test of a State's commitment to ensure that: no one shall be restrain to distress or to dire, cruel or offensive therapy or chorda is the extent to which it is willing to accept limitations upon the powers of its own officials. It requires redness to interfere with their powers in the interests of extending protection to those who are in a position of weakness and vulnerability, irrespective of who they are or of what they might be suspected of. It is only when States can be seen to bead dressing torture and ill-treatment that it can truly claimed that they are working towards the realisation of this most fundamental of human right. There are opportunities for the various human rights bodies with responsibility to adjudicate on any allegation of torture and deliver a decision based on the case brought before them. However, the provisions of the ICCPR and CAT are legally binding. As both Committees authoritative interpreters of their respective treaties, rejection of their recommendations may be evidence of bad faith by a State towards its human rights treaty obligations. The human rights bodies serve numerous significant purposes. First, the views, recommendations, and other jurisprudence of the Committees have had the effect of changing the behaviour of States on a number of occasions. Such changes may occur immediately, or much later, for example, after a State has undergone a transition from dictatorial to democratic government. It could be gradual as governments slowly reform themselves. There may be strong opposition against an abusive government both at home and abroad. In order to show that a State is willing to up hold its international obligation to outlaw torture, the State can inject human rights issues into domestic debates and provide indicators for future reform.

One must not underestimate the effect that 'naming' and 'shaming' can have on a delinquent state and individual perpetrators. It exposes the lackadaisical attitudes of those involved in torture and this, is in itself, is an important form of accountability. One traditional tool for preventing or discouraging human rights violations is embarrassment. States would not want to be embarrassed by adverse human rights findings. It is therefore mortifying for a State to be labelled a torturer. Adverse findings of torture or other human rights violations help to build pressure upon a State which may eventually bear fruit by prompting that State to abandon tortures a policy. National and international human rights concerns can operate *in tandem* to expose violations and spark criticism of government involvement in torture and other in human treatment. International attention can also lay the ground work for encouraging formal enforcement and prosecution of individual perpetrators. It may even bear more immediate fruits by leading to the provision of a remedy for the victims. Jurisprudence of all the human rights bodies serve functions beyond enforcement. It provides important indicators of the meaning of the various rights in the human rights instruments banning torture. For example, jurisprudence helps to identify the practices which can be classified as torture, or cruel inhuman or degrading treatment, and which cannot. Jurisprudence helps to determine the human rights status of certain phenomena, such as amnesty

laws or corporal punishment. Such interpretations are of use to all States, rather than only the State or individual concerned in a particular case. It is crucial to understand and recognise the contexts in which torture occurs in order to combat it. In this respect, the decisions of the human rights bodies influence national courts and governments all over the world. Finally, the jurisprudence developed under various treatise inforce the crucial message that all acts of torture are simply unacceptable in all circumstances. The uniform recognition by States that torture is in fact intolerable is an important step forward for human rights recognition and enforcement. Apnmary issue preventing implementation against torture may relate to lack of a process and understanding, within a State, of how to implement the recommendations. For example, delays suggests that: "the main obstacle to implementation is not the unwillingness of state parties to cooperate but the lack of a mechanism in domestic law to receive and implement decisions emanating from a foreign entity. In such situations, the follow-up process is an invaluable means of rendering a State accountable."

5.2 Recommendations

The prohibition of torture and ill-treatment is now deeply embedded in customary international law and binding upon all States. Therefore, it is necessary that State practice conform to international law. But States should do more than this. They should be seen to reflect the prohibition within their domestic legal order at the highest level, for example, through constitutional guarantees and domestic bills of rights. However, such proclamations are insufficient, as the international community has recognised. In consequence, it has developed two separate but complimentary approaches: the development of mechanisms for considering allegations of human rights violations at the international level and for requiring the criminalization of torture at the national level.

It is recommended that States should reflect this in their own practice and ensure that acts which fall within the definition of torture under Article 1 of CAT are offences within their national legal systems. In addition, the offence must also cover acts constituting complicity or participation in torture, not solely the individual who directly causes pain or suffering. These riousness of the offence also requires that a sufficiently severe penalty be applied in all cases of torture.

More importantly, they should ensure that their courts have jurisdiction and the competence to hear cases concerning allegations of torture irrespective of where the alleged torture took place, the nationality of the alleged torturer or the of the victim. It is also important that national legis-

lation should be purged of exceptions based on notions such as 'necessity', 'national emergency', 'public order' or 'superior orders' or other purported justifications. These are the cracks through which torture and ill-treatment seeps into. More importantly, persons who refuse to obey orders to commit torture and ill-treatments should not to be intimidated or subjected to punishment.

It must also be mentioned that even if the well-constructed domestic law criminalizing torture and ill-treatment is legislated, it is practically worthless if it is not used. What are torturers to think if they know that what they are doing has been expressly out lawed and is subject to severe criminal penalties but in practice the legislation is not used. Such a failure could itself be considered evidence for non-condemnation of ill-treatment. Readily accessible and fully independent mechanisms should be in place to which all persons, irrespective of whether they are currently in detention or not can bring their allegations of torture. Firstly, an investigation must be initiated whenever a person claims to have been or appear to have been ill-treated so that he/she can appear before judicial authorities. Where prosecutions are brought.

It is important that alleged victims, witnesses and those giving evidence are made to feel sufficiently secure so that they may contribute towards the prosecution of the case without fear. In States which have developed a practice of bringing criminal prosecutions against those who are suspected of committing acts of torture, there may be a reluctance to prosecute in certain circumstances. In some cases, this reluctance may be quite justifiable but even where this is so there are usually other possibilities which need to be explored. For example, those with operational or political responsibility for acts of ill-treatment should be susceptible to legal process.

Consequently, military commanders and superiors can be held criminally liable if they order, induce, instigate, aid, or abet in the commission of a crime. This is a principle recognized under international law. In addition, the doctrine of 'command responsibility' or 'superior responsibility', holds that individuals who are in civilian or military authority may, under certain circumstances, be criminally liable not only for their actions, but for the crimes of those under their command. In most states, there will be a requirement to place specific attention to the question of 'superior orders' cannot be used as an excuse to commit torture.

In fact, officials are under a duty to disobey orders from a superior to commit torture. **In** many instances, this duty to refrain from torture despite an order to the contrary may be inconsistent with the general duty of officials, particularly those within strict hierarchical structures such as the police or the military, and will be most difficult to implement in protectionist, insular command structures. The implementation of this provision will not only require law reform in most cases, it will usually also require clear general directives to be Issues coupled with effective independent over sight mechanisms so that junior officials have places to go to when faced with this dilemma. There should be no *de jure* or*de facto* immunity from prosecution for nationals

suspected of torture.

The scope of immunities for foreign nationals should be as restrictive as possible under contemporary international law. Prompt consideration should be made of extradition requests from third States in accordance with international standards. Rules of evidence properly reflect the difficulties of substantiating allegations of ill-treatment in custody. Other appropriate action, civil, disciplinary or administrative must be taken where criminal charges are unlikely to be sustained because of the high standard of proof required. The prosecution and punishment of those responsible for torture and ill-treatment is a vital component of the realisation of human rights. Where the human right 'not to be subjected to torture or ill-treatment' has been breached, it can also form an important part of the response of the State to the wrong done to the victim, his/her family and community. Full reparation for the wrong identified and punishment of the offender remains the responsibility of the State.

The obligation upon the State to offer reparation to victims exists irrespective of whether a successful criminal prosecution can or has been brought. This flows from the very fact that there has been a breach of the State's obligation to ensure that no one shall be subjected to torture or ill-treatment as a matter of international and human rights law. It must not be for gotten that those who are expected to enforce the law are themselves in need of assistance in carrying out the difficult and often dangerous tasks that are expected of them.

It is unrealistic to expect those who are entrusted with the policing of society to do so in a manner which fully reflects these requirements unless they are given proper professional training and resources, and their operations undertaken against a properly constructed set of assumptions. Human rights approaches to torture prevention therefore should also indicate the importance of ensuring that law enforcement officers receive appropriate training, and law enforcement agencies are properly resourced. More importantly, policing functions should be separated from military functions. With this regard, codes of conduct and ethics should be established and promoted to inform, guide and under write best practice in the realisation of these functions. Furthermore, those entrusted with special responsibility should be targeted for recruitment and throughout their career by a package of measures that involve training and sensitization on torture. For instance, integrate human rights, create awareness that in protecting human rights they are actually facilitating effective and fair enforcement, and in return, they will gain respect, efficiency, professionalism and effectiveness.

The South African Human Rights Commission, Lawyers for Human Rights, and the National Consortium for Refugee Affairs have launched one law enforcement training program that focuses on respecting the rights of refugees, asylum-seekers, and migrants. The object of the training is to assist the police in enforcing legislation relevant to migrants, asylum-seekers, and refugees, while recognizing constitutional rights and human rights norms. Technikon South Africa, one of the largest tertiary institutions in the country, offers a police training course that provides practical guidance on policing in the context of democratic society. The objective of the training is to demonstrate that police compliance with the law actually advances the prospect of criminal convictions by minimizing challenges to the admissibility of evidence and ensuring procedural fairness. Noncompliance, on the other hand, makes it more likely that Torture should be designated and defined as a specific crime of the utmost gravity in national legislation. The offence of torture should be characterised as a specific and separate offence. To subsume torture within a broader, more generic offence e.g. Assault causing grievous bodily harm; abuse of power fails to recognise the particularly odious nature of the crime and makes it more difficult for states to track, report upon, and respond effectively to the prevalence of torture. Therefore States must provide appropriate penalties that reflect the grave nature of torture. It is commendable that people who opt out of practice of torture often have a strong sense of moral values and conviction that allows them to override their natural inclination to obey the superiors or follow their peer group. It must be pointed out that situations that could foster an atmosphere of abuse must be eradicated. Hence, any processes involving detaining and interrogation need to be open to public scrutiny and not carried out by the police or the military in secret.

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