

CUSTODIAL VIOLENCE IN INDIA: A HUMAN RIGHTS APPROACH

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LIST OF ABBREVIATIONS

1. ACHR Asian Centre for Human Rights
2. AIR All India Reporter
3. APT The Association of Prevention of Torture
4. CEDA Convention on Elimination of All Forms of discrimination against Women
5. CID Criminal Investigation Department
6. CINAT Coalition of International Non-Governmental Organizations against Torture,
7. CPAED Convention on the protection of rights of All persons against Enforced disappearance
8. Cr,P,C, Code of Criminal Procedure
9. CRC Convention on the Rights of the Child
10. DGP Director General of Police
11. DIA District Inquiry Authority
12. ICC The International Criminal Court
13. ICCPR International Covenant on Civil, and Political Rights
14. ICERD International Convention on Elimination of All Forms of Racial Discrimination
15. ICESCR International Covenant on Economic Social, and Cultural Rights
16. ILI Indian Law Institute
17. IMA Indian Medical Association
18. IPC The Indian Penal Code
19. IRCT International Rehabilitation of Victims of Torture,
20. LCI Law Commission of India
21. MOCOCA Maharashtra Control of Organized Crimes Act
22. NHRC National Human Rights Commission
23. OMCT The organization of Medical Centre of Torture
24. OPCAT Optional Protocol of Convention against torture, and other cruel, in Human, and Degrading Treatment, and Punishment
25. PADC Police Act Drafting Committee
26. POTA Prevention of Terrorism Act

- | | |
|-----------|--|
| 27. PUCL | Peoples Union for Civil Liberties |
| 28. SCC | Supreme Court Cases |
| 29. SHO | Station House Officer |
| 30. TADA | Terrorist, and Disruptive Activities (Preventions) Act |
| 31. UDHR | Universal Declaration of Human Rights |
| 32. UNCAT | United Nations Conventions against Torture |
| 33. UNVFT | United Nations Voluntary Fund for victims of Torture, |
| 34. WMA | World Medical Association |
| 35. WPA | World Psychiatric Association |

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49. Peoples Union for Democratic Rights v State of Bihar, A,I,R, 1987 SC 355

CHAPTER-I

INTRODUCTION

General

The word 'custody' implies guardianship or protective care. Here, custody refers to charge with respect to a person in prison. Section 167 of Code of Criminal Procedure, 1973 distinguishes between custody as Police Custody and Judicial Custody.

The word 'Violence' is the state or feature of using excessive unrestraint or force. It may lead to physical or mental injury. Custodial violence is usually used to describe the violence committed against any person by the police or some judicial authority. Thus, custodial violence is an inhuman treatment caused by a police or judicial authority to a person under their custody. It can be committed in the form of torture, death, rape, and excessive beating in custody.

Custodial violence in police custody has been practiced all over the world for very long time. Even in ancient times, our texts provide evidence of violence resembling custodial violence. Kautilya (Arthashastra) describes various types of tortures such as tearing by wild animals, burning, cutting off limbs, mutilation, and castration etc being given to prisoners.

The British rule was also notorious for using violence in custody. Unfortunately, it is still being practiced to a large extent in present society. Custodial violence has ever been a dark spot at dignity of democratic values and human rights.

According to section 167(1) of Cr. P.C., the magistrate who gets the custody of accused person may authorize his detention as per his discretion from time to time.¹ According to section 167 (1) of the Code of Criminal Procedure, 'police custody' can be granted for a period not extending 15 days. It means remand to the police custody mainly for complete interrogation. In law, a police officer has two main occasions to keep a person in custody. The first one starts from the time when he is arrested till the time he is produced before the court. This happens within the first 24 hours from the arrest of accused. The second period starts when

¹ Custodial Violence, Current Affairs 2017. <https://www.vajiramandravi.com/current_affairs_files/Dec-2016/Feature%20Article.pdf>

the police gets remand from the court after producing the accused before the magistrate. The accused person's custody can be extended for not more than fifteen days. After this, the person is sent to judicial custody i.e. jail or prison, where he remains in custody until he gets a bail order or if he is convicted, until his sentence is completed.

Although malnutrition, overcrowding, unhygienic conditions etc are some of the factors of death in custody, custodial violence still remain the most common cause of deaths in prisons. Custodial violence includes various ways of third degree torture, harassment, display of force not permitted under the law etc. It includes illegal detention, arrest which is wrongful or on illegal or on insufficient grounds use of third degree method on the suspected person. The suspects are also humiliated with the use of filthy language, they are not allowed to sleep, the confession is extorted under pressure etc.

The police commits a severe act of violence upon arrested person in their custody under the pretext of investigation, and interrogation. The gravity of such a crime is clear from the fact that it is committed by the very person who is considered to be a guardian and protector of law. The safety of individual from torture and abuse of power by the police and various other law enforcing officers is something which should cause deep concern in an otherwise free society. The possibility of violence being committed by the police on various persons in their custody is more than other forms of violence. The primary reason for this is that the victim of such type of violence will not be able to display any form of protest against it. The officials tend to use their official positions to manipulate the evidences presented against them. Death in the custody of police does not usually occur on the records of the police lock-up. They tend to show or make out a case of suicide or accident. The complaints against torture are hardly given attention because of the brotherhood prevailing within the system. Usually, no direct evidence is available to support the charge as the crime scene i.e. the police lock-up is away from public gaze. In addition to this, in cases of custodial deaths, the witnesses are either the existing policemen or the co-prisoners who are likely to be reluctant to appear against the policemen because they fear retaliation by superiors.

However, despite constitutional and statutory provisions safeguarding rights of the citizens,

the highly growing instances of torture and death in custody has remained a disturbing trend. It has been proved with past knowledge that the nastiest forms of violation of human rights takes place during the investigation when the police personnel takes recourse to a third degree method to get evidence or confessions. A morning newspaper reading shows ample examples of dehumanizing torture, rape, assault, and even death caused in police custody. This has become a common occurrence and is indeed depressing. Because of the rising incidents of police brutality in custody, the credibility of the system in particular and rule of law in general has come into question. Consequently, the society is perturbed by this occurrence.

All forms of torture or inhumane and degrading treatment, occurring at the stage of investigation, interrogation or otherwise should be given severest of condemnation by the government and the civil society. The Government functionaries cannot become law-breakers and if that happens, it is likely to generate some contempt for law, and a civilised nation cannot permit such a thing to happen.

Definitions Of Torture

Torture, according to the 1984 United Nations Convention against Torture is defined as, *any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or by way of the consent or acquiescence of a public official or other person acting in an official capacity.*²

UN Convention Against Torture³

This definition was limited to only nations and government-sponsored torture, and limits

² United Nations Convention Against Torture, 1984. (10 December 1984)

³ [Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), United Nations, 10 December 1984.

the application of torture to the perpetrators who were directly or indirectly acting in the official capacity. It seems to exclude the following:

1. The torture was perpetrated by the hate groups, some form of rebel or terrorist organization which ignores the national or international mandate;
2. The random violence taking place during the war; and
3. Punishment that tend to be allowed by the national laws. Even if such a punishment uses some techniques that are similar to torture. Professionals in the torture rehabilitation field tend to believe that the definition is very restrictive. They also tend to believe that this definition must be broadened to include other similar acts of organized crimes.⁴

Tokyo Declaration, 1975

The World Medical Association, in its Tokyo Declaration, 1975, defined "torture"⁵ as *"the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons, acting alone or on the orders of any authority to force another person to yield information, to make a confession or for any other reason"*.⁶ Custodial torture, often known as extra-judicial executions has been on a rise in India especially between 2002, and 2007. This definition here includes torture as a part of the violence or formalized abuse in addition to torture being part of usual criminal activities. Since the 1973 the major organizations like Amnesty have adopted simplest and broadest of the definition of torture:

*"Torture is the systematic, and deliberate infliction of acute pain by one person on another, or on a third person, in order to accomplish the purpose of the former against the will of the latter"*⁷

⁴ James Jaranson, "The Science, and Politics of Rehabilitating Torture Survivors in *Caring for Victims of Torture*", edited by Michael K, Popkin, Amer Psychiatric Pub Inc,1998.

⁵ [World Medical Association, Declaration of Tokyo, 1975,](#)

⁶ *I.d.*

⁷ [Amnesty International, \(1973\) Torture in the Eighties, USA Edition, Amnesty International Publication](#)

According to Major Richard⁸

Major Richard clarified that torture as *First Degree* refers to legal arrest, and custody, *Second degree* refers to illegal arrest, and custody, *Third degree* refers to the physical force used on a suspect by the police to force him to tell the truth, Our criminal law has progressed beyond doubt, and has laid down the fundamental principles of Criminal Jurisprudence, These principles though not mentioned in the statutes or the Constitution, are considered essential for rights.

The following Principle have been considered as fundamental to our criminal Jurisprudence:-

- A- Accused to be presumed innocent until proved guilty,
- B- The burden of Proof on the prosecution to prove the guilty,
- C- The prosecution to prove his guilty beyond all reasonable doubt,
- D- If any doubt regarding the guilty then the benefit of doubt must go to the accused,
- E- The principle of “Let ninety criminal go unpunished, but let no one innocent person suffer”,
In spite of the glorification of these fundamental principles by various Human Rights Organizations, we can see that many types of Third Degree methods are still in vogue including the following-
 - i. Beating
 - ii. Burning of parts of human body by way of help of cigarette,
 - iii. Denying Food, Water, and sleep,
 - iv. Forcing the arrest person to drink urine,
 - v. Putting ice slabs on naked part of human body,
 - vi. Suspending the person in head down position by his legs,
 - vii. Providing electric shock treatment,
 - viii. Providing hot water bottle treatment,

- ix. Forced extraction of teeth, and nail,
- x. Using of rack as an instrument to stretch the limbs, and body,
- xi. A thumbscrew, a metal studded vice in which suspect's thumbs are compressed,
- xii. Putting rats, and cockroaches inside the trouser of the person by way of his hand, and legs tied down,
- xiii. Inserting stick in public zone,
- xiv. Plucking hair, and moustache,
- xv. Making the person crouch.

Historical Perspective

Historically, the deliberate infliction of severe pain as a method of punishment for serious crimes was a usual activity counted as normal and a part of justice delivery system. This was prevalent until the development of the concept of humanism in the 17th century philosophy. After this, the infliction of cruel and unusual punishment came to be criticized under various legislations like the English Bill of Rights, 1689. The advancement of Enlightenment especially in the western countries sprouted the idea of universal presence of human rights. 1948 marked the beginning for recognition of basic human rights with the adoption of the UDHR i.e. the Universal Declaration of Human Rights. In practice, its effect are limited, however, since the declaration in international law do not have a strict enforcement mechanism, it is considered a part of the customary law only.

Greeks & Romans

Historically, the Romans & Greeks used techniques of torture for conducting interrogation of alleged culprits. Until 2nd century AD, this method was used primarily on slaves. However, after this period, the infliction of torture began got extended to entire lower classes community. The testimony of a slave was admissible only if it were extracted by the techniques of torture. This was based on the assumption that a slave could not be usually trusted to reveal truthful accounts voluntarily. Crucifixion was one of the ancient methods of torture. Its antiquity is clear from its wide usage by the Phoenicians, Scythians, Greeks,

Romans, Persians etc. The practice of mass crucifixions was followed by the slave rebellion Prior to the act of crucifixion, victims would often be whipped by barbed metal lashes in a savage manner. This was to induce the process of bleeding by death. This resulted in further weakening the victim and thus speeding up the process of death. This also acted as a spectacle and deterrent for the public.

Over a period of time, the definition of types of torture has been expanded. Arriving at an all encompassing definition has become a major question for ethics, philosophy as well as law. Some modern scholars do find the concept of torture compatible with the way the society understood the concept of justice at the time of Christ, Romans, Jews, Egyptians and other successive cultures during that time. They had included torture as part of their justice delivery system. Romans used crucifixion, Jews used stoning, and Egyptians used the brutality of desert sun death.

The Catholic Church prescribed that the governments should "stop short of danger to life or limb" if using torture in their criminal procedures.⁹ The modern Church's views on torture have changed manifolds since they are generally associated with Enlightenment. The *Catechism of the Catholic Church* (1994) severely condemns the usage of techniques of torture considering that it is a grave violation of human rights. It states that torture which uses both the physical and moral forms of violence in order to extract confession, punish the guilty, and to frighten the opponents is antithetical to human respect and dignity. In history, these cruel practices were in very common for use by the legitimate governments in order to maintain law and order situation. Sometimes they would see protests from the Pastors. This would occur despite the fact that in these highly religious times where the Church would always teach the act of clemency and mercy. The church forbade the shedding of blood. In the recent times, it has become very evident neither were these practices necessary for public order nor were they in conformity to the basic rights of the human being. It is important that we work on the abolition of such practices as they are a big blot on our system. Prayers need to be sent out both for the victims as well as their

⁹ Ramesh Pratap, Catholic Church & history, <Kocebu.com/v4/20322.pdf>

tormentors.

Middle Ages

Medieval as well as the initial modern European courts used the techniques of torture depending upon what crime the accused had committed and their social status. Torture was considered a genuine means to extract confessions and obtain the name of the accomplice and other such information about the crime. It was only permitted by law in case there existed half proof against the accused.¹⁰ Many a times, the defendants who would be sentenced to death would use torture to extract the names of certain accomplices to the crime.

Early Modern Period

During the prevalence of early modern period, torture of witches was a widespread practice. In the 1613, Anton Praetorius had described this situation in his acclaimed book *Gründlicher Bericht Von Zauberey und Zauberern (Thorough Report about Sorcery, and Sorcerers)*. He initiated raising of voice against these forms of protests against means of torture. In Colonial America, women were sentenced to the stocks by way of putting wooden clips on the top of their tongues or subjecting them to other torturous technique for the crimes specific to gender. Apparently talking too much was considered to be a crime specific to gender.¹⁹ Certain forms of Naive American people, especially those from the eastern half of United States, were later engaged in sacrificial torture of war captives.

In 17th century, the number of incidents of judicial torture decreased in multiple European areas. *Johann Graefe* in the 1624 published the *Tribunal Reformation*, which provides for a case against torture. *Cesare Beccaria*, who was an Italian lawyer also published "An Essay on Crimes, and Punishments" in 1764. In this essay, he argued that various forms of torture unjustly punished the people who are innocent. The requirement to use such forms of torture was unnecessary in proving guilt of such persons. The writer Voltaire also condemned fiercely the practice of torture in his essays.

¹⁰ *Franklin J.*, *The Science of Conjecture: Evidence & Probability Before Pascal*, Baltimore, (Johns Hopkins University Press : 2001) pp 26-30.

In 1798 Egypt, Napoleon Bonaparte also wrote to one Major-General *Berthier* about the fact that it is a barbarous custom to whip accused men as a method to force them to reveal important secrets. It has been an established fact that that this mode of interrogation of putting men to torture is a useless way. Therefore, the Commander-in-Chief has the usage of this method which is clearly contradictory to reason as well as humanity.

The European states had abolished the practice of torture from their respective statutory laws by late 18th and maximum the early 19th centuries. Countries like Sweden and Prussia were sometimes the first ones to do so. Denmark also abolished torture in the year 1770. Russia did it in 1774 and Austria in 1776. France went on to do so in 1780 and the Netherlands further in 1798. In Spain, Napoleonic conquest over it put a complete end to usage of torture by 1808.

Torture in the 16th century

Methods like slow slicing and causing death by a thousand cuts, was a way of execution that was used in countries like China roughly around the 900 A.D. According to a historical lore, a technique called *lingchi* began with the torturer employing an extremely sharp knife, first putting out the eyes and then rendering the condemned people incapable of observing the remainder torture. Thus, hopefully adding to psychological trauma for the procedure. Successive but rather minor cuts through chopped off nose, ears, tongue etc. After this, the torturer will proceed to the graver cuts that will remove the large parts of flesh from the bigger body parts e.g, the thighs and the shoulders. This whole process is said to have lasted three-four days in total, and upto maximum of total 3,600 cuts. This way the heavily carved out bodies of deceased persons were later on put on parade for the public show.

Another method of torture was *impalement*. In this, a person was pierced with a long stake. This penetration could be through various body parts like rectum, mouth etc, This method would ultimately result in a slow and painful death for the victim. Many a times, here, the victim would be hoisted in the air after only the partial impalement. The victim would slide down the pole as an effect of gravity. In some cases, death could also take many days. The practice of impalement was also frequently practiced in countries like Asia and Europe and

went throughout the Middle Ages.

Recent times

Modern mindset has been framed around reactions to war crimes and crimes against humanity. The major examples of such crimes would be those committed by Axis Powers in the II World War, which also led to sweeping rejection of most of its practices by international community at large.¹¹ As many states still engage in practice of torture, very few actually wish to admit the truth, either in terms of their own citizens or towards the international community. A multitude of devices tend to bridge the gap. Even then. All throughout the history, and even today, multitude of states have engaged in torture, although all of it has occurred unofficially.

As per the scholar *Ervand Abrahamian*, despite several decades of prohibition on torture the taboo against torture was broken by 1980's, and the practice of torture had returned by way of vengeance. This was propelled in part by the television and as a result it gave an opportunity to push political prisoners and mobilize them.¹² As per Professor Darius Rejali, even though dictatorships may have used the techniques of torture more and more indiscriminately, ultimately it was the modern democracies i.e. the United States, Britain, France etc who had pioneered and ultimately exported the techniques that ended up becoming the language of modern torture.

In today's times, the practice of torture has become highly common in the liberal democracies. This is despite the existence of several international treaties like the *International Covenant on Civil, and Political Rights* and *UN Convention against Torture*. These treaties make the practice of torture illegal. Now, despite the existence of such international conventions, the practice of torture and its cases continue to occur. The prime example of this would be the 2004 Abu Ghraib torture committed by the military personnel of the US Army,

¹¹ [Tortured confessions: prisons, and public recantations in modern Iran](#) - Page 3

¹² [Darius Rejali; Torture, American style, The surprising force behind torture: democracies by](#)

As per the findings of Dr, Christian Davenport of the University of Notre Dame, available evidence suggests that the non-governmental organizations like Amnesty International have played the most phenomenal role in stopping torture once it started.¹³ The research suggests that it is only the civil society and not the government institutions that can ultimately help in stopping the torture once it begins.

Dimensions Of Custodial Violence

The prevailing incidents of custodial violence has thrown a larger question about the implementation and abuse of rule of law by the police force who are supposed to be the custodian of law. Police has to perform its role and duty as the law-enforcing agent for the state and has to play a pivotal role in the up-keep of welfare of society. It is their primary duty to find out the real culprit and ultimately arrest and put him through the trial procedure according to the India's law. It is also their duty to guard the society in general and individuals in particular. Under these circumstances, the relatives or other close family and friends of the accused are picked up in order to extract correct information. Such cases are unknown since the persons are arrested by the police but no formal entry of arrest is made in the register. It is only when the police decides to produce the arrested person and pick them up before the Magistrate that they make a formal entry of such arrest in the police register. Under such a situation, the question around personal liberty, social security, and security of the society has to be balanced adequately balanced. Such style of investigation outside the mode of formal arrest, affects liberty of a citizen. And we are aware that liberty of an individual has always been a matter of great constitutional importance to our system of governance¹⁴. In our constitutional democracy, all powers belongs to people, and such power is entrusted to them by some specified institutions.

To a civilized society, no attributes can be more important than life and personal liberty of its member. This fact is also evident from the paramount position given by the Courts to the articles of the article i.e. Article 21 of the Constitution¹⁵. Consequently, infringement or

¹³ [The Death Penalty: Revenge Is the Mother of Invention](#)

¹⁴ *Rameshwarlal V, State of Bihar: AIR 1968 SC 1303*

¹⁵ *Kehar Singh V, UOI: AIR 1989 SC 653*

deprivation of personal liberty by State's actions is regarded as a serious violation in the most civilized societies. The liberty of citizens is a priceless freedom secured by the Constitution in compliance with statutory formalities.¹⁶The Court in *State of Bihar V, Kameshwar Prasad*¹⁷ held that no member of the executive part of government can interfere with the liberty of a person. This is exclusive of the fact that he can support legality of his action before the Court. Another tradition of British justice is that judges should never shirk from making a decision in such issues just because the executive is involved. The same jurisprudence has been adopted by India according to which the courts exercise jurisdiction over personal liberty on individuals.

Another case where personal liberty of an individual was enunciated by the Supreme Court was *Mohamad Karim @ Mohd, Subrati V State of W. Bengal*¹⁸. Here, the Court stated that liberty is vehemently protected by the constitution, but this same liberty is not at all absolute. It is not to amount to give a licence to individuals to indulge in wrongful activities, leading to unjustly deprivation of essential services and supply. The society's right to peace and justice as a whole is by its nature of a greater importance than the right of an individual¹⁹. It is a blatant error to assume that the liberty will prevail where there is a paucity of laws.²⁰

On the topic of providing a balance between security and personal liberty of a particular community, Lord Atkinson observed in the case of *Rex V, Haliday*²¹, that regardless of how precious the subject of personal liberty maybe, there will always be something due to which it may be sacrificed for eg. legal enactment, national war etc. Thus, in cases involving a conflict between the security of the society and personal liberty, the former will prevail. While both of them are the wheels to keep the societal structure going, when advantage is given to either over all scenarios, there will be a breakage in the functioning of the society

¹⁶ *Sher Mohammad V, State of W, Bengal*: AIR 1974 SC 806

¹⁷ AIR 1965 SC 575

¹⁸ AIR 1973 SC 207

¹⁹ *Mohamed Karim V, State of W, Bengal*: AIR 1973 SC 207

²⁰ Article 21, Constitution of India.

²¹ 1917 AC 260

. At the same time, individual is a constitutive element of the above said society. An individual is the reason for which the society exists. In the case of *State of Punjab v Sukhpal Singh*²² the Supreme Court had stated that the social security is in no doubt the most precious goal of State but it cannot be the only goal of a society, The maxim *Libertas omnibus rebus reseat* applies i.e. Liberty is an inestimable thing above the price. It would be highly ironic if we sanction the subversion of liberty in the name of social structure. It is duty of the court to oversee that procedures are strictly adhered to. This judgement thus concludes that even though social security is definitely a must for the ultimate benefits of the society at large, personal liberty of individuals should never be curtailed at the cost of society. The reason given was that a society exists to benefits the individuals since individual is a constitutive element in it.

OBJECTIVE OF THE STUDY

1. study nature, and extent of custodial crimes in the police custody;
2. Critically analyze the causes of custodial crimes in police custody;
3. Understand consequences of custodial crimes resulted in police custody;
4. Examine critically the preventive measures necessary to combat custodial crimes;
5. Assess the role of various Human Rights Institutions, and Civil Society Organizations in addressing issue of custodial crimes; and
6. suggest ways, and means to control custodial crimes in police custody,

RESEARCH METHODOLOGY

The research in this work has been mainly based on doctrinal, and analytical research. The method was considered for the given topic because it is a theory based topic for which doctrinal method is preferred as compared to non-doctrinal or empirical method of research. However, some interviews were also conducted which gave a broad

²² AIR 1990 SC 231: 1990 Cr, L,J, 584

understanding of the landscape on custodial violence in India.



CHAPTER II :

‘CUSTODIAL VIOLENCE and LEGAL SCENARIO’

Indian Perspectives

Custodial Violence, and Indian Constitution

Both constitutional and statutory legal framework in India contains provisions on safeguards related to the arrest, detention, torture, and other such crimes conducted by police in custody. The substantive law provides for punishment to a person who inflicts torture, death, or injuries on a person in custody. The procedural law also contains several safeguards related to the rights of a person in police custody. The Constitutional jurisprudence is supplemented by other relevant statutory provisions and judicial pronouncements. In addition to this, the Protection of Human Right Act, 1993 provides for setting up Human Rights Commissions and Human Rights Courts both at national and state level for the protection of human rights of people in police custody. Although India has ratified various instruments such as International Covenant on Economic, Social, and Cultural Right (ICESCR),²³ Universal Declaration of Human Rights (UDHR),²⁴ International Covenant on Civil, and Political Rights (ICCPR),²⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),²⁶ etc., the incidents of violations continue even now. Apart from this, the UN Declaration on Basic Principles of Justice for Victims of Crime and the abuse of Power is relevant. Article 21 of the *Indian Constitution* states that no person can be deprived of right to life and personal liberty. The only exception is if it is through a procedure established by law. Thus, right to life is a fundamental right provided by Part III of the Constitution. It does not mean mere bare existence, rather it also refers to the fact that life should be full of dignity which is absolutely essential for human existence of the society. Personal liberty is taken care of by virtue of Article 22 which states that such arrested persons shall be informed of the grounds of arrest and produced before the magistrate within maximum 24 hours of their arrest.

“Liberty is the most cherished possession of man,”²⁷

Constitution of India also provides for the right to life and liberty. This protection of life

²³ Ratified on 10th April,1979

²⁴ Adopted on 1948

²⁵ Ratified on 1st November,1961

²⁶ Singed on 30th July,1981

²⁷ *KharakSingh v State of U.P.*: AIR 1963 SC 1295: 1963 (2) Cri L. J.

and liberty available to a citizen includes the rights of a person arrested. as the person so arrested is also a citizen of India, and he is protected by Article 21 of the Indian constitution and, as much if at all his life, and liberty is to be curtailed, it must be according to Article 21. The expression ‘personal liberty’ under Article 21 is not limited to confinement to prison or bodily restraint only.²⁸

In part III, the Constitution also deals with fundamental right. This prohibition imposed by virtue of Article 22, 21 and 20 of the Constitution is relevant to criminal processes.²⁹ Article 20 (1) prohibits the retrospective operation of penal legislation. Article 20(2) on the other hand guards individuals against double jeopardy. Article 20(3) states that no persons accused of any offence shall be compelled to be a witness against himself. The reason behind this protection is to grant protection against testimonial compulsion which may coerce the accused in a subtle way. According to established interpretations of “Life and personal liberty” under Article 21, this term includes the constitutional guarantee provided against torture, assault, and injury that can be inflicted against a person arrest in custody.³⁰ Some of the major illustrative decisions of the Court in this matter are as follows-

In *Dastagir v, State of Madras*³¹, the Court held that any punishment with an element of torture will be deemed to be unconstitutional. In *Inderjeet v, State of Uttar Pradesh*³², the Supreme Court held that certain restrictions in the prison amount to pressure, torture or infliction going beyond what is authorized by the Court. Such inflictions are unconstitutional. Further the court extrapolated that the person who is an under-trial or is convicted should never be made to go through any restraint whether mental or physical if such restraint does not fall under the law and amount to human degradation. In *Sheela Barse v State of Maharashtra*³³, it was held that Article 22(1) and 22(2) are also highly

²⁸ *I.d.*

²⁹ *Prakash v Commissioner*, Petition no. 200/2012, Gujarat High Court (2005) <
<https://indiankanoon.org/doc/195612027/>>

³⁰ *I.d.*

³¹ AIR 1960 SC 759

³²

³³ AIR 1983 SC 378

relevant for the current purpose. One of the objects of these provisions is to ensure that checks exist to prevent the abuse of power of arrest, and detention. Under this, Article 22(1) provides that the arrested person cannot be detained in custody without being informed of grounds of his arrest as soon as possible. Such arrested person can also not be denied of his constitutional right to consult or of his right to be defended by a legal practitioner of his choice. Article 22(2) provides that every person who is arrested and detained in the custody must be produced before the nearest Magistrate maximum within 24 hours of the arrest. This is exclusive of the time taken in the journey from the place of arrest to Magistrate's court in which he is being presented. Such person shall not be detained in the custody beyond the said amount of period without Magistrate's authority.

The "Police" shows in Entry 2 of the State List of the VII Schedule of the Constitution. Thus, it becomes a primary responsibility of the State Government to maintain public order. Invariably, the police, being a part of the system of civil administration, will be at the forefront of maintaining the law and order. This task is accomplished under the broader framework of constitutional governance following the principles of Sovereign Socialist Secular Democratic Republic India as envisaged in the Preamble to the Constitution by the people of India. Together with the idea of democratising policing activities in India, a Code of Conduct was also adopted for the Police in the year 1960 at the Conference of Inspector Generals of Police. This was later on circulated to all the state governments.

Provisions in Criminal Law

Consistent by way of the Constitutional guarantee, the statutory provisions are contained in *Indian Penal Code, 1860, Criminal Procedure Code, 1973, and Indian Evidence Act, 1872* for protection of a person arrested in connection by way of the commission of an offence as well as prevention of custodial commission of crimes in police custody, Punitive Provisions are contained in the Indian Penal Code which seeks to prevent violation of right of life, and personal liberty of a person in custody, The definition in section 44 of CrPC which defines the expression "injury" as covering harm to body, mind, and reputation or property, Section 220 of Cr.P.C. provides for the punishment to an officer/authority that happens to detain or keep a person in confinement by way of the corrupt or a malicious

motive, Section 330, and 331 of CrPC provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence Section 330 therefore directly makes the torture punishable under the *Indian Penal Code, 1860* its Sections 330, and 331 read : Section 330 says, “*whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished by way of imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.*” Sections 340 to 348 of the *Indian Penal Code* constitute a group of sections dealing by way of wrongful restraint, and wrongful confinement, and their aggravations, Of course, they envisage that the confinement itself is illegal –an ingredient prominently brought out by the adjective “wrongful”, Whereas section 348 which provides for punishment to a person who wrongfully confines any person for extorting any confession etc, The section also punishes extortion committed to extract information leading to the detection of offence or misconduct, The relevance of the Code of Criminal Procedure, 1973, various contain provisions intended to operate as a safeguard against custodial offences ranged from arbitrary arrest detention in custody to compensation to the victims of custodial abuses, Section 50 of CrPC talks about ground of the arrest, and right to bail, This section has been regarded as mandatory, particularly in the light to constitutional guarantee, so that non-compliance by way of the section renders the arrest, and detention illegal *Ashen v, The State*⁵². The arrested person has right to medical examination if he or she a complaint of torture, maltreatment under section 54, Section 56, 57, and 58 of CrPC related by way of the action after arrest is made. Section 56 provides that a police officer making an arrest shall send the arrested person before the Magistrate having jurisdiction in the case or before the officer in charge of the police station. By section 57, a person cannot be detained more than 24 hours when they are arrested without warrant. This is exclusive of the time that is necessary for the journey from a place of arrest to the Magistrate’s court. Provisions of section 57 are mandatory.

Section 58 provides that officers in charge of a police stations shall report cases of all persons arrested without warrant to the District Magistrate or Sub Divisional Magistrate within the limits of the respective stations. Where the arrest of a person under the Code of Criminal Procedure, 1973 is under a warrant, section 70-81 of the Code become applicable, of which sections 75, and 76 are relevant for

the present purpose. Section 75 deals by way of notification of substance of warrant, and Section 76 provides person arrested to be brought before Court without delay not exceeding 24 hours. This is exclusive of the time necessary for the journey from the place of arrest to the Court of nearest Magistrate.

An important provision in the area of police custody is contained in section 160(1) of the Code regarding power of attendance of witnesses. This section of particular importance, in view of the express prohibition, contained in the proviso, against summoning of women of any age, males under fifteen years at the place other than their place of residence. The legislative seems to have taken note of the possibility of abuse of authority if the section is not complied with. Further taking note of the fact that a person in custody may be subjected to subtle influence to make a confession, section 163(1) of the Code expressly provides prohibition of inducement of threat or promise. In case, any person dies while being in custody of the police, it becomes mandatory to conduct inquiry into cause of his death. Indian Evidence Act, 1872 elaborated that wherein confessions made to Police Officers inadmissible in evidence. Section 25 says: "No confession made to police officer, shall be proved as against a person accused of any offence".

Legislations which facilitate Custodial Violence

There is a body of the Indian law that is responsible for facilitating the practice of torture and also ill treatment to certain extent. The powers of detention provided under the Constitution also involves the systematic suspension of major legal and constitutional safeguards. This provides an easy gateway for facilitating torture, inhuman, cruel and degrading treatment to the detainees. For instance, Article 22 (3 (b)) of the Constitution excludes the people detained under the preventive detention legislations from being given the right to be informed about the grounds of arrest, or to be defended by legal practitioner of their choice, and to be produced before the nearest magistrate within 24 hours. The United Nations Special Reporter on Torture has also noted that torture is most frequently practiced during the *incommunicado detention* that is when no information is provided about the detention to the relevant authorities.

Incommunicado detention must be made illegal, and the persons who are held in such detention must be released without any delay.³⁴ Multiple legal provisions should be drafted in a way that they ensure that the detainees are given access to the legal counsel within 24 hours of their detention.³⁵ Preventive detention Legislation includes the *National Security Act, 1980* and numerous state legislations. For example, the Tamil Nadu "Goondas" Act, 1982, the Jammu & Kashmir Public Safety Act, 1985 etc. In its report, the punitive and preventative usage of detention legislation in the state of Jammu and Kashmir, which happened to highlight the concerns about Public Safety Act. The organization called Amnesty International had reported that it was repeatedly informed of several major incidents of torture and also ill treatment which has also resulted in death in a lot of cases.

The *Terrorist, and Disruptive Activities (Prevention) Act, 1987* (TADA) which was in force until 1995 was one of the source of use of torture by law enforcement officials. The act removed safeguards provided under Article 22 of the Constitution. The people for whom the act was aimed i.e. suspects of "disruptive activities" and "terrorist act" were left helpless in the face of such events. It also safeguards and henceforth facilitates the usage of techniques torture. Under Sections 26 and 25 of Indian Evidence Act, the confessions/statements which are made to the police officer or in police custody are not admissible in evidence. These provisions very clearly highlight the danger of relying upon such "statements/confessions" in view of the reasonably continuing suspicion that these statements/confessions will be obtained by the authorities after resorting to illegal practices like torture. There is evidence of the continued usage of torture to extract confessions even after the presence of safeguard and its rigorous application.³⁶ However, Section 15 clause (1) of the act suspended this safeguard as well, thereby making the confessions made to the police persons above Superintendent of Police, permissible to be admitted in evidence. Section 32 of the *Prevention of Terrorism Act (POTA), 2000*, is also similar to provisions of Section 15 of TADA. Before it was passed, the NHRC had expressed its opinion, by saying that it will raise the occurrence of incidents of coercion and torture while

³⁴ Amnesty International Org. <https://www.amnesty.org/download/Documents/128>

³⁵ *I.d.*

³⁶ <https://www.amnesty.org/download/Documents/128>

inducing confession. Thereby it will likely to be inconsistent with Article 14 (3) of the ICCPR. This concern of NHRC appears to have come true in practice. In the state of Gujarat, several allegations have been made by various detainees in the Court about the confessions having to be extracted from them by force. Other than the fact of facilitating torture by suspension of constitutional guarantees for detainees, the legislations exist in India which provide immunity for the perpetrators of torture. This leads to more incidents of torture by the officials who tend to believe that they have immunity from the prosecution.

Sections 45 and 197 of Cr.P.C. protect from prosecution to the members of Armed Forces. These provisions also protect public servants from anything done or purported to be done by them while discharging their official duties. This immunity is also reflected in various state legislation providing for a certain period of limitation for bringing action against the police. For ex., Section 53 of the *Tamil Nadu Police Act 1869*, states that the actions brought for things done under provisions of this Act shall be subjected to a three-month long deadline since the commencement of the Act. The requirement for this sanction in the law has been highlighted in multiple cases where the allegations of torture in the custody were brought despite very strong protests by arguing that torture cannot be a part of the 'official duty'. Torture or other kinds of ill treatment shall not be considered as a part of the 'official duty' of law enforcement officials. Consequently, the need for taking prior-sanctions of the concerned government for seeking prosecution of public officials need not be invoked. The increased barriers to successful prosecution facilitate greater impunity. Bringing an end to impunity is an essential step in dealing with torture. All these statutes and the laws end up making a network of laws that lead to its misuse by Police Officers. An uncontrollable atmosphere is created. All these laws, and provisions must be reviewed with the sole aim of avoiding ill treatment and torture.

Recent Legal Development

In recent years Criminal Law (substantive, and procedural law) have been amended deals by way of prescribes the duties of the police in arresting offenders, investigation officers, and also contains provisions for their prevention of custodial abuses, and punitive provisions to ends of justice, Rapes in police custody are normally seen as a stigma on the

law enforcing agency by the citizens, Police which is primarily agency for ensuring safety of women, children who were downtrodden is not forgiven by the society if they themselves get involved in rape cases in police custody. *For custodial rape Indian Penal Code amended section 376 IPC under Criminal Law (Amendment) Act, 2013*⁵³. The other relevant provision is that the insertion of a new Section in Indian Evidence Act, 1872 (Section 114A), This Section lays down that in a prosecution for rape under sub-Section (2) of Section, 376 of the Indian Penal Code, where it is stated that if sexual intercourse is proved, and following question concerns the issue of consent, the Court shall presume that the woman did not consent if she states before the Court that she did not infact consent.

Under Section 176 of Crpc, when a person dies while being in the custody of police officers, it is required by law that the Magistrate conduct a mandatory enquiry into the cause of death. The recent amendment in procedural law Code of Criminal Procedure in 2005 which amended section-176 provided that a magisterial level enquiry will be needed if any person dies in the custody of the police or if any rape etc is committed in the custody of the police.

Besides above mentioned developments it is noteworthy to mention here that a compressive Bill has been drafted, and introduced in the 14th Lok Sabha by Mr Mohan Singh, Member of Parliament. The bill is called- The Custodial Crimes (Prevention, Protection, and Compensation) Bill -2006 and it seeks to attain prevention as well as protection against custodial crimes. This will be for compensation in the matters of custodial offences and for the appointment of vigilance Commissioner.

THE PREVENTION OF TORTURE BILL, 2010

The Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment or Punishment was adopted on 9th December 1975 by the United Nations General Assembly.⁵⁴ On 14th October 1997, India signed the Convention. The Ratification procedure required the enabling legislation to provide for a definition, and also the punishment for such torture. Although a few related provisions already hold a place in the Indian Penal

Code, they don't necessarily define "torture" very clearly. These provisions also don't make 'torture' a criminal offence as required by Article 4 of the Convention. Thus, it was necessary to provide ratification to the Convention so that the Indian domestic laws could be brought in conformity with the Convention. This would make it necessary to either amend the existing provisions of Indian Penal Code or bring in place a new legislation. This matter was examined by the *Law Commission of India*, and the then Attorney General of India.

Whoever, being a public servant or being abetted by a public servant or by way of the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes —

- (i) *Grievous hurt to any person; or*
- (ii) *Danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture,*

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

Explanation — for the purposes of this section, 'public servant' shall, without prejudice to section 21 of the Indian Penal Code, also include any person acting in his official capacity under the Central Government or the State Government.³⁷

International Scenario

2.2.1. International Documents Against Torture

Preamble to the United Nations Charter states that it's purpose is to reestablish faith in fundamental human rights, dignity, human being's worth, equal rights etc.³⁸

³⁷ Prakash v Commissioner, Gujarat HC (2005) <https://indiankanoon.org/doc/195612027/>

³⁸ Ibid, Uttar Pradesh (174); Gujarat (134); Andhra Pradesh (109); West Bengal (98); Tamil Nadu (95); Assam (84); Karnataka (67); Punjab (57); Madhya Pradesh (55); Haryana (45); Bihar(44); Kerala(42); Jharkhand(41); Rajasthan(38); Orissa (34); Delhi (30); Chhattisgarh(24); Uttarakhand (20); Meghalaya (17); Arunachal Pradesh (10); Tripura (8); Jammu, and Kashmir

The protection of human rights is the primary agenda of all civilised societies. Multiple international instruments provided under were drafted with a view to serve the above purpose and to deal with torture. Following instruments are there-

United Nations Convention Against Torture 1984

On 10 December 1984, this convention was adopted by UN General Assembly. It came into force in 1987. Article 1 of the convention defines 'torture' in a broad manner. Article 2(1) imposes the obligation on parties for taking effective measures in order to prevent torture in the territories under the jurisdiction of the state concerned. Further, Article 2 (2) also ensures that in cases of exceptional circumstance which include the threat of a war, internal instability or other forms of public emergency, such incidents shall not be used as a way to justify torture. In addition to this, Article 15, 11, and 10 of the Convention provide for protection against custodial torture³⁹.

2.2.2 Regional Documents against Torture

The Inter-American Convention to Prevent and Punish Torture (1987) and the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989) have given the momentum to the movement at the regional level. At present, 146 countries are party to the Convention against Torture (136 countries ratified, and 10 signed the Convention) as well as 46 have countries ratified to its Optional Protocol, and 25 signatory countries which have incorporated the legislative, judicial, administrative, and other measures contributed to the movement at domestic level. On 14th October, India had signed the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment. But India has not yet ratified it.

³⁹ <https://thelawbrigade.com/wp-content/uploads/20>

Chapter III :

‘POLICE ATROCITIES IN INDIA’

Evolution and Development of Police System in India

Throughout various ages, the Indian police has systematically functioned as primary legal enforcement agency of State. In initial period of civilization, the governance of State was focused on ruling the individuals and the family groups. Laws were such that the individual kings felt the need to pronounce them from time to time. The enforcement of laws meant there was a need for strict compliance to the desires of the ruler. The necessary concepts of governance prevailing in ancient Indian culture was also about Dharma. In discussions about the duty of the king according to his Dharma, the Dharma sutras mentioned that it was important for the king to properly wield the 'Danda' (stick). The most basic unit of primary policing was first the village. A village can be defined as an aggregation of the families along with their land and pastures which surround that village. Every other village has its local court which happens to be composed of village Headman, and other elders. The courts there would decide minor criminal cases like petty theft and other civil disputes. The examples of village headmen include the Gramadhipati in the epic Mahabharata, and the Grambhojaka in the Buddhist Jatakas.

The primary police functionary during the Mughal empire was the Faujdar, the Kotwal etc. In it, a number of villages would be grouped together to form a cluster called the Mahal or Parganah. A cluster of Parganahs would form a Sarkar, and a cluster of Sarkars would further create a subah or Province. The duties were structured in a way that the kotwal was responsible for policing the city, town, and their suburb. These functions are mentioned in the book Ain-i-Akbari. His primary duties were prevention of crime, social abuses, to regulate cemeteries, burials, slaughterhouses etc. He was also responsible for patrolling the city at night, and to collect the intelligence from the paid detectives. In the register maintained by him, he included the proper address and professions of all resident of the city and also observed their income, expenditure and checked whether the weights and are accurate.

Thus overall, the functions of a Kotwal were all preventive, detective, and regulatory,

Another officer i.e. the Faujdar was technically the head of Sarkar. Although he was mostly subordinate to the Governor, he had the authority to directly communicate to the Imperial Government. He would be responsible for dispersing, and arresting the robber gangs. He would also take cognizance of all forms of violent crimes, His primary functions were to guard the roads of the countryside, suppress crimes, hunt the bandits, prevent fire arm manufacturing and along with this to also assist the Malguzars in collection of revenue by making all forms of demonstrations to overcome the opposition, wherever necessary. In actual practice, the Zamindars were made responsible for the peace and security of its people . The duty of the Faujdar was only to ensure that Zamindars performs his duty. To further reform the then existing system, the first step undertaken by the British officials was to relieve the Zamindars and replace place with that of the Magistrate in the district, Despite the attempts made by the police to reform, the first major step came in the form of a statute i.e. the Police Act,1861.

Custodial Crimes in Police Custody in India: A Historical Perspective

The situation of custodial crimes is nothing new in India. We had reference of Torture, and violence by way of the police in India since the Vedic age (2000-1400 BC). The ordeals of perpetrated with fire and water were heard to have been used in a single combat. In the time period (1400-800 BC) torture was commonly inflicted by the police on teir prisoners.. It was widespread in law, practice, and philosophy. Kautilya's in his book Arthasatra also spoke of the multiple ways of inflicting torture such as burning/cutting of body, tearing, tramping to death by bulls and elephant, mutilation etc. Manu who considered to be the law giver of our age, also emphasized the essential nature of practice of torture to protect the society from hardcore criminals. The Buddhist period (BC 300-300 AD) was the age of great humanitarian conduct. In this age, the administration of justice became imbued by the ideals spread through Buddha's teachings.

Colonial Period:

In their earlier years of rule the British found the torture used by officials like Kotwals. The Select Committee on East Indian Affairs (1832) found that had discussed the routine use of torture, “There is ample evidence that colonial administration was aware about excessive pain by revenue, and police officials used purposely to extort confessions, money or taxes” (Rao 2004), Torture Commission (1855) appointed by British Government for investigation of alleged cases of torture in Madras Presidency in Its report highlighted that police torture was quite prevalent in the Madras Presidency, Torture Commission defines the word ‘torture’ means as pain by which guilt is severely punished or any type of confession is extorted. The report drawn attention to the fact that torture is a structural problem of policing, rather than aberrant, and extraordinary instances, The recommendation of the torture commission has laid foundation to set up Police Commission, 1860.

The Police Commission, 1860 also recommended setting aside the role of military police in the form of a separate forum. It rather suggested that a single single homogenous civil force be constituted under the proposed Police Act. It should be mention that the present police system in the country is also based on Police Act, 1861. Consequently, the criminal law enactments and the procedural law ones namely Indian Evidence Act, 1872, Indian Penal Code, 1860, and Code of Criminal Procedure, 1898 had incorporated multiple provisions ranging from Section 162, 163 of the Cr.P.C. along with sections 25, and 24 of the Evidence Act. All these together prohibited the various forms of torture perpetrated on the interrogated person along by way of sections 330 and 331 of the Indian Penal Code which made it a punishable offence to cause hurt /grievous hurt in order to extort confession.

The Indian Police Commission (1902-03) checked the performance of police 40 years after the Police Act, 1861. It suggested that in reality, the current police force is too far from being considered efficient; the force is defective in training, and organization and is inadequately supervised. The Commission also found that the force is generally regarded as corrupt and oppressive. It concluded that the police utterly failed to generate the

confidence and cooperation of the general public. Thus, the police force was found to be mostly in unsatisfactory condition throughout the country, and the abuses of the force were everywhere. This kind of inefficiency causes a great injury to people and discredit of the Government. Consequently, the radical reforms in the force were felt unavoidable and urgent. The most landmark recommendations were –

- Educated Indians be recruited in the force at a higher level
- The law & order wing be separated from the investigation wing.
- A cadre be made for Sub-Inspector of police at the police station and the Criminal Investigation Department (CID) at state levels. This was to be a change from the existing system wherein the police sub-inspector cadre at the police station level is based on the recommendations made by the Indian Police Commission.

However, in the following decades that followed, various movements like the Swadeshi Movement, the Home Rule agitation, Khilafat, Non-Cooperation, Quit India Movement, Civil Disobedience etc, generated a favorable movement for coercive solutions instead of the investigative grievance by the colonial government.⁴⁰

After -Independence:

Post-Independence various Police Commissions were appointed by the Union and the State Governments to analyze the performance and working methods of the Police. Almost all of these Committees and Commissions had revealed a story of third degree torture in the custody of police. They were resultant of political ends, corruption, absence of proper infrastructure, absence of scientific aids etc. These recommendations given by the Commission were primarily concerned with the way the administrative set up is created.

Shah Commission set up in 1987 observed that the police brutality was highly prevalent during the period of Emergency in India i.e. from 1975 to 1977. It also happened to draw attention towards the said manner as to how the police behaved during the period of emergency. They were not subjected to the scrutiny of any superior authority. According the recommendations, the Commission also informed the Government to actively take proactive measures in order to insulate the police

⁴⁰ Prakash v Commissioner, Gujarat HC 2005 < <https://www.amnesty.org/download/Documents/128>>

authorities from an illegitimate political and executive interference.

In 1979-81, the National Police Commission was set up for examining the issues related to the police functioning in eight reports. In the first report, the said Commission observed:

The Police force is frequently criticized for using various third degree methods during the course of investigation while also examining the suspected or accused persons. The exercise of police brutality in handling suspects is referred to even in the literature on police forces and Indian Police force is no exception to this. Interrogation of either the witness or the suspect or accused is an extremely difficult exercise for any police officer. It requires enormous amount of patience and a better understanding of the human psychology. Unfortunately, majority of police officers in India are under pressure of work and are driven by the desire to attain results quickly and easily. They leave the path of patience in the scientific interrogation and ultimately end up resorting to use of force in multiple forms to pressurize the them. In certain occasions, the law recognizes the great need for using force in discharging official duty on some specified occasion. However, it is well understood that the use of force against a person in custody while he is ostensibly lonely and also helpless is grossly unlawful, and a highly degrading despicable practice. This practice requires to be condemned in the strongest terms. There is absolutely nothing which happens to be so disturbing as is the conduct of police in torturing persons in the custody.

The National Police Commission provided a recommendation that there should be a mandatory judicial inquiry in the cases of rapes, and deaths in police custody. This judicial inquiry must be conducted by the additional Session Judge who will be nominated for this particular purpose in every district. The nomination will be done by the state government. While doing so, the government shall work in consultation of the High Court. Such a nominated judge would usually be designated at the post of District Inquiry Authority (DIA). This post of DIA will then forward the reports of inquiry to respective State Governments. It shall be absolutely mandatory for governments to publish a detailed report and also its final decisions within 2 months of the receipt of such report.

A public complaint board was set up to supervise the adequate implementation of these schemes. It was then suggested that a public complaints Board will be needed to be set up at the State level and the district level. Further the surprise visits by the senior officers to the police station would help in the immediate detection of the person in custody. Any ill- treatment, malpractices noticed during such visit will be met by a swift and deterrent punishment. Unfortunately, these recommendations of National Police Commission were not adhered to by the government.

The Rebeiro Committee (1998) had examined the importance of valuable recommendations given by the National Police Commission and understood its importance in changing environment of the country. This Committee also suggested setting up a Police Performance and Accountability Commission at State level and constituting of District Complaint Authority in order to examine the complaints including those of arbitrary arrests, false implications, custodial violence etc. Further, the Committee suggested that mitigation function of police should be separate from the law function. It also recommended that and order work, and replacement of the Police Act, 1861 by way of a new Act etc,

Padhmanabhaiah Committee on Police Reforms (2000) was also constituted to study recruitment procedures for police force and its duty, training, and responsibilities. The Committee observed that innumerable Commissions and Committees in the past have again and again stressed the requirement for improved usage of scientific mindset in investigation, and to reduce custodial violence. However, the nature of forensic science study in India and its usage by police force in the investigation of crimes is in a dismal state. Therefore, the Committee finally recommended that all police stations shall be equipped with 'investigation kits', and all sub-division shall have mobile forensic science kits.

The Committee on Reforms of the Criminal Justice System (2003) highlighted the various problems associated with the criminal justice system and police system in India. The Committee also examined the principles Criminal Justice System like the rights of the accused, right to silence, presumption of innocence and the burden of proof. The Committee observed that:

“The manner as to how the police investigation is conducted is critically important for the functioning of criminal justice system. Apart from the serious miscarriage of justice that will result from the collection of evidence, it also leads to error or malpractice, but successful prosecution of the real guilty person also depends on careful search for truth, collection of evidence etc. Protection

of the society that we live in is of paramount importance. Thus, the laws, procedures, and police practices should be such that they ensure that the guilty person is apprehended and punished by way of utmost dispatch. And also that in this process, the innocent is not harassed. The whole aim of the investigation procedure and rather the entire criminal justice system is the quest for truth and justice. In order to achieve this objective, all investigating officers should be properly trained, supervised, with availability of necessary technical and scientific support round the clock. The Committee also observed, that an accused shall have freedom to approach the Magistrate for any incidence of torture that happens with him. In this way, the magistrate can therefore, remand him to the available judicial custody. This will be true of all types of violence or any kind of sexual offence that is perpetrated against him in custody. In all of these cases, a detailed enquiry must be conducted. The Committee also recommended getting audio and video recording of the statements made by the witnesses along with the dying declarations and the confessions. It suggested that new interrogations centers should be established in each District, where they do not yet exist. And that they should also be strengthened where they already exist, by providing facilities like tape recording, videography, and photography etc. However, the Malimath Committee report several criticism by human rights organizations like the Amnesty International India and International Commission of Jurists, 2003 etc for some of their recommendations.

In recent years, the discourse of police reforms institutionalized mechanism to effectively deal by way of bonafide public complaints against the police including custodial violence, and the audit of police performance, as well as police accountability towards people of the country have discussed in the legislative, judicial, and executive levels, In this regard, Supreme Court heard a writ petition filed by two retired police officers, and a non- governmental organization demanding implementation of the National Police Commission reports, The Apex Court passed the ruling in 2006 that is now a historic judgment on police reforms known as the Prakash Sigh vs, Union of India (writ petition (civil- No, 310 of 1996(22-9-2006), The Judgement deals by way of three aspects of policing -autonomy, accountability, and efficiency, The court held in discharge of our Constitutional duties, and obligations having regard to the aforementioned position, and issued the following directions to the Central Government, State Governments, and Union Territories for compliance till framing of the appropriate legislations: National Security Commission, State Security Commission, Selection, and Minimum Tenure of DGP, Minimum Tenure of I,G, of Police & Other Officers, Separation of Investigation, Police Establishment Board, and Police Complaint Authority,

In this regard, the Government of India, having visualized the long felt need to replace the outdated Police Act 1861, set up a Police Act Drafting Committee (PADC) in September 2005 to draft a new Police Act that could meet, inter alia, the growing challenges to policing, and to fulfill the democratic aspirations of the people, In drafting the Model Police Act, 2006 the Committee was guided by the need to have a professional police ‘ service’ in a democratic society, which is responsive, effective and efficient to the needs of its people, and is also accountable to Rule of the Law, The Act provides for social responsibilities of the police, and emphasizes that the police will be governed by the principles of impartiality, and human rights norms, by way of special attention to protection of weaker sections of society including minorities, It also contains a provision that the composition of the police will reflect social diversity, The other salient features of Model Act include Functional Autonomy, Encouraging Professionalism, Accountability Paramount, Improved Service Conditioned, and Role of Protecting Internal Security In light of New Threats,

The State Governments have already started taken actions as per the directions of the Supreme Court. PADC drafted new Police Act, By June 2007, the states of Bihar, Assam, Haryana, Karnataka, Himachal Pradesh, Kerala, Rajasthan, and Tripura had all enacted the draft police legislation. Recently, the 5th Report on the Second Administrative Reforms Commission (2007) on Public Order, and The Draft Report of the National Policy on Criminal Justice System (2007) had emphasized that the issues pertaining to custodial violence in India needs to be looked upon and dealt very seriously.

Custodial Violence, and persecution in police custody

Concept Of Torture

Torture in the laymen language means the practice of inflicting cruelty, atrocities, and hurt thereby deliberately leading to great pain, both physical and mental. The purpose is to punish or get information or forcibly making one person confess to something said by the other.⁴¹ Legal glossary gives definition of ‘torture’ as “the act of infliction of extremely excruciating pain”,⁴² ‘Torture’ as a practice generally supports intense physical, mental, or psychological suffering aimed at pushing someone to act or omit to act against his or her will. It leads to breaking down and giving up under the severe pain that is inflicted upon

⁴¹ *Collins Cobuild* : English Language Dictionary (1992) P,1546

the person. For obvious reasons, torture does not seem to be torture for the people who practice it. It goes by the names of sustained interrogation, questioning or examining. Irrespective of the given name, this results in intense culture of brutalization. The torture commission of India also made an attempt to define 'torture' as the pain by which guilty person is punished or confession is extorted.

Torture is the act or practice of deliberately inflicting extreme physical pain or mental agony. Historically it has been carried out by individuals and/or sanctioned by groups and even states. The reasons for subjecting an individual or society to torture can be as a form of punishment, revenge, political motive, show of deterrence, method of coercion, or simply one form of sadistic gratification by those carrying it out. The intention of the torturer may or may not be to kill or injure the victim. But sometimes, the act of committing torture is highly fatal, and can be accompanied with forms of murder as well as capital punishments. The aim of this may also be to just inflict pain. In certain other cases, the torturer may also be completely indifferent to all the condition that the victim suffers.

It happens to be a violation of human rights. It is also very blatantly declared to be highly unacceptable by international convention like Article 5 of UDHR i.e. Universal Declaration of Human Rights. The signatories to the III and IV Geneva Convention, officially came to the consensus that they will not torture its prisoners. Torture was also prohibited under the aegis of the United Nations Convention Against Torture. This is ratified by 147 countries.⁴³ There is an established consensus that torture and similar other ill-treatment given to people in custody are immoral and impractical.⁴⁴ But despite these international conventions that have been agreed to by various countries, organizations monitoring abuses of human rights report the widespread usage of torture condoned by states,⁶¹ Amnesty International has estimated that at least 81 countries currently practice torture in some or the other form.⁴⁵

⁴³ "[United Nations Treaty Collection](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en)"http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en, Retrieved 7 October 2010

⁴⁴ "[Torture, and Ill-Treatment in the 'War on Terror'](http://www.amnesty.org/en/library/info/ACT40/014/2005/en)"[Amnesty International](http://www.amnesty.org/en/library/info/ACT40/014/2005/en); 1st Nov 2005 <http://www.amnesty.org/en/library/info/ACT40/014/2005/en>; Retrieved 2008-10.

⁴⁵ [Report 08: At a Glance](#)"; [Amnesty International](#); 2008; Archived from [the original](#) on July 8, 2008; Retrieved 22nd Oct 2008.

The term 'torture' has not been defined in the Constitution of India or the Indian Penal Code. The word torture today has become synonymous by way of the darker side of the coin of human civilization. It will be correct to say that the practice of torture is a completely integral part of the working of police force. It is ostensibly the best method to extort confession. It is also one of the quickest source to silent criticism and dissent. Therefore, it comes handy to both police and the prison authorities in order to fulfil their respective objectives.

The reasons for infliction of torture can be two folds-

- It can be a means for eliciting evidence from the witness who is otherwise unwilling to give it.
- It can itself be the punishment.

The prohibition of such torture and all other forms of cruel, inhuman, and degrading treatments have been in demand since the time of adoption of the Universal Declaration of Human Rights, 1948. No violation of human rights has been subjected to so many conventions as torture. Everything aims at the total banning torture in all its forms. But despite its commitment to eliminate torture, the truth remains that the practice of torture is still widespread. Torture in police custody is a serious violation of all forms of human dignity, and its also degrades and destroys individual personality to a very large extent. Torture is a calculated assault on the human dignity. Whenever the question of human dignity being wounded arises, the civilisation steps backward ⁴⁶In custodial crimes, the real concern is not just the infliction of bodily pain, but also the mental agony which the person undergoing such custody goes through. Whether it is the physical assault, rape in police custody or any other trauma, the experiences gone through by such person are beyond the purview of law.

Methods Of Torture

Physical methods of torture have been consistently used throughout the history. It can range from beating by way of fist and boot to the use of extremely sophisticated and high tech custom design methods such as the racking, A certain kind of appreciable but shocking ingenuity has been observed in the invention of these instruments and techniques to inflict physical torture. Various other types of torture include forms of sensory or sleep deprivation, holding in restraintful or awkwardly

⁴⁶ *D.K.Basu v State of West Bengal*, AIR 1997 SC 610 (615)

damaging position , going through the uncomfortable extremes of heat and cold, being subjected to loud noises etc. The thin boundary between forms of torture, and other legitimate techniques of interrogation is not universally agreed upon. Psychological torture is to a larger extent less well known than the forms of physical torture. Psychological torture and its intended sufferings tends to be subtle, and consequently much easier to conceal. In practice the distinctions that lies between the physical, and psychological torture is often blurred. Physical torture is the practice of infliction of extreme pain or suffering on a person. In contrast to this, psychological torture is targeted directly at the psyche by way of calculated violations of psychological needs, along by way of deep damage to psychological structures. It leads to the breakage of beliefs system underpinning the normal sanity. Torturers tend to inflict both forms of torture in combination to multiply the associated effects. The offence of rape and other related forms of sexual abuse are also often used as by the police as a methods of torture. In medical torture, the medical practitioners uses the practice of torture to judge the character of victim and determine what capacity of pain the victims can endure. In this way, they apply treatments that enhance torture and even act as torturers themselves. Pharmacological torture refers to the usage of drugs which produce psychological or physical pain or discomfort. Extensive tickling was also one of the unusual form of torture which has been documented in history. It could be both physically and psychologically painful.

Beatings, and kicks⁴⁷

This method of abuse, by far the most common, is often especially noticeable after release from detainment, as some victims possess extensive bruises, and injuries on their bodies, Beatings, like other methods of torture, inflict wounds upon victims which in most cases do not receive any medical attention, or receive it far too late, Infections, and more serious pain caused further abuse are the consequence Kicks, and punches both of these techniques are employed widely, and are sometimes directed at the genitals or other particularly sensitive body parts including the head, genitals, and joints. There are isolated reports of victims being hit by way of hammers, Blows also carried out by way of thorn-covered or barbed plants cause very painful skin injuries, The victim is also hit by way of a club, piece of wood or bar from which nails are protruding. This method causes some of the worst injuries, which can sometimes be fatal.

⁴⁷ [Http://www.igfm.de/fileadmin/igfm.de/image/Laenderinfos/china/China_folter_Zeichu](http://www.igfm.de/fileadmin/igfm.de/image/Laenderinfos/china/China_folter_Zeichu)

Twisting, and Overstretching

The victim is *overstretched* where he is tied down at the thighs, and the knees on a narrow wooden or iron bench, Their hands are tied or handcuffed behind their back, Boards or bricks are positioned at certain distances under the feet, The victim's legs become overstretched, and the victim suffers excruciating pain, by way of this type of torture the victims are usually unconscious or delirious after about twenty minutes, Regardless of this, prisoners are tortured for up to four hours in this way, In some cases victims have been additionally forced to "dance" in order to worsen the pain,

The arms of the victim are *twisted forcefully* behind their back, The victim stands in open space by way of straight legs, They must be bent over by way of their head down as far as possible, and fingers pointing towards the floor, This method is often coupled by way of the "aeroplane method". The victim must stand in front of a wall by way of closed, straight legs, and must also place their hands stretched out sideways up on the wall, The pain is so severe that the victim sometimes loses control over their bladder, There have been cases of death when victims have been abused repeatedly in this way, The height of the cage is lower than that of the victim, The dimensions are measured so that the victim can neither stand upright nor lie down, Furthermore, the victim is often chained to the bars of the cell by way of handcuffs, The pain, which arises after a short time due to the unnatural posture, is so unbearable that thirst, sleep deprivation, hunger etc almost become an afterthought.

Standing for long hours

The victim must - often over several days, and in some cases whilst tied up - *remain in a certain position*, This punishment is often combined by way of deprivation of food, water or sleep, The victim stands in the blistering sun, by way of feet on the hot ground,, and sometimes without shoes or socks, Apart from the agony caused by standing for so long, the victim also suffers sunburn, The victim must stay outside overnight in the biting cold or stand on snow or ice, Depending on the length of the torture, this can lead to frostbite of the toes or even the feet, The victim stands on a high chair or stool, In some cases, victims in this position must stretch their arms upwards, As soon as the victim falls off the chair from exhaustion, they are beaten, and then forced to get back up on the chair, The victim must stand on a tower of bricks by way of their hands above their head, and tied to the ceiling, As soon as the victim loses balance, the tower collapses, and the victim hangs in the air.

Aeroplane

The victim stands bent over by way of their head down towards the floor, and hands stretched out sideways, and upwards (like the wings of an aeroplane) against the wall, by way of their hands behind their head, the victim must hold their upper body bent over at a 90° angle.

Sitting on a board by way of a jagged pattern

This involves sitting on an iron panel which has sharp embossment, and indentations. After a period of time, bleeding wounds develop, Infections occur frequently. The victim is forced to sit on a broom handle over a long period of time, If they are not able to do this, they are punished by way of a beating.

Squatting for a long period

The victim has to squat down on two legs, hold their head by way of their hands, and rest their elbows on their thighs. This causes the legs to become numb, and pain to spread throughout the whole body, The victim may prop themselves up by way of their hands but after a while blood blisters develop on the hands, Victims are observed over the entire period, usually by fellow prisoners, who have been offered privileges to monitor the victim, and face punishment if they allow the victim to rest. The extremely long period of squatting is combined by way of sleep deprivation, If the victim falls over, they are immediately forced to take up the squatting position again, This occurs until the victim collapses, Victims suffer from paralysis, and long-lasting pain, amongst other things, The victim is forced into a squat by way of one foot placed a short distance behind the other, Only half of the sole of the back foot touches the ground, and the back foot thus bears most of the body weight, This method usually causes pain within a few minutes, particularly in the back foot, and leg, In the longest case known to the ISHR, a young woman was forced to squat for an entire month, Her subsequent fate is unknown⁴⁸⁷⁰.

Handcuffs

Over a long period of time, the victim is bound by way of handcuffs to a hot eating pipe, The arms

of the victims are bound by way of handcuffs either behind the back or between the legs, Often shackles are added to the feet as well, In some cases the victim is also "fed" through the mouth, In order to force the victim to open the mouth, the police use brute force, Often other detainees are compelled to forcibly open the victim's mouth by way of iron spoons or other hard objects.

To bear a sword on the back

This position leads especially quickly to the onset of pain, and paralysis, The victim must kneel down, Bricks, ashtrays, jagged pieces of wood or other similar objects are positioned under the knees.

Hanging over a bar

The victim has to hang upside down over a bar, The lower legs lie over the bar, and the victim has to grasp their knees by way of their hands, The body weight is borne especially by the backs of the knees, This method of torture is described as being especially painful.

Bound to a "death board"

This punishment is often coupled by way of isolation, For weeks the victim is bound to a wooden board by way of all limbs outstretched, and fixed down, The victim is permanently chained, and must be fed by other detainees, Victims also have to sleep on the board, and lie in their urine, and excrement, Some of the victims are stripped naked prior to being chained to the board, This type of torture leads to decubitus ulcers.

Hanging

To be hung up by way of handcuffs causes severe pain in even the 'mildest' of cases, The hands of the victim are bound, The police then pull the hands of the victim over the victim's head, and hang them up until their feet no longer touch the ground.

Electric shocks

Victims have been abused by being given up to a dozen simultaneous electric shocks, sometimes over several hours, The victims receive electric shocks all over the face, including in the eyes, as well as in the genitals, nipples, and other sensitive body parts, Electric shocks are also applied in the mouth, and vagina.

The electric shocks leave behind burn marks, These wounds often become inflamed, and make further electric shocks even more painful.

Insertion of a tube through the nose:

- i. A tube is inserted without any lubricant through the nose, and into the stomach of the victim,
- ii. The tube is not put in place by medical personnel, but rather by the security guards,
- iii. Injuries are simply accepted as a matter of course,
- iv. Tube repeatedly inserted, and pulled out
- v. The tube is removed, and then inserted over, and over again,
- vi. Some victims have died from this, presumably because of aspirated blood,

Burning, and scalding

Fingers, toes, faces, genitals, nipples, and other body parts are burnt by way of cigarettes, According to reports, there have been cases where victims have been forced to swallow a burning cigarette, Serious burns have been inflicted upon some victims by way of red-hot iron rods, Due to the hygienic conditions in the camps, and prisons in China it is almost inevitable that such injuries subsequently become infected, Very hot water is poured over the victim's head in order to scald it, Infusion of boiling water Very hot or boiling water is fed into the victims' mouth or nose via a tube, Internal scalding is caused.

Hunger, thirst, sleep deprivation

Some victims are provided by way of very inadequate amounts of food, sometimes over a long period of time, In some cases prisoners receive no food ration at all for days, Some victims have developed severe hunger oedema, whilst others have become totally emaciated, and too weak to stand up, Over several days the victim has access to a very inadequate amount of water, As a punishment or simply out of neglect, some prisoners occasionally receive no water at all, The victim is prevented from sleeping for several days, Measures used to achieve this include tying the victim up in a painful position, constant lighting, noise, and especially beatings, kicks, and other types of

punishment if the victim attempts to lie down, Sleep deprivation is regarded as torture under international law, and is branded as such by the United Nations, Sleep deprivation may sound quite harmless in comparison to other methods of torture; however, ongoing sleep deprivation is an extraordinarily cruel form of torture which leads to a breakdown of the nervous system, and to other serious physical, and psychological damage.

Sexual violence

Women who are detained for any reasons are locked up in cells by way of male criminals, In some cases the women have already been stripped naked, The prison guards order criminals to rape the women or at least insinuate that they can violate the women without punishment, Detainees have also been raped by guards, Male political prisoners are also victims of sexual violence perpetrated by homosexual prisoners or guards, Various objects are inserted into the vagina or anus of the victim, such as bottles, sticks, and brushes.

Isolation

Small cells sometimes provide a surface area of only three square metres, Isolation cells generally do not have a window, a bed, water or a toilet, Victims are locked up in this type of small cell for months, and must eat, sleep, and relieve themselves there, Sometimes, to intensify the torture, the victim's hands are tied to the cell door so that the victim cannot sleep for days on end, In addition, water is poured onto the ground to make sleep even more difficult, The victim is locked up naked in an iron cage, and lowered down into water until it reaches their throat, The victim cools down very quickly, and cannot sit or sleep, If they become unconscious, they drown.

Stabbings, and lacerations

The insertion of sharp objects such as bamboo sticks, needles or nails under the fingernails is widespread, In at least one known case, a doctor inserted cannulae under the fingernails of the bound victim. Sharp bamboo sticks are forced, often by way of a hammer, through the fingertips, and under the fingernails of the victim, Usually, this completely removes the fingernail, The stick is initially pushed into one finger, In some case, all fingers are "dealt with" in succession, Lips, nipples, genitals and, for instance, the skin of the back are pierced by way of sharp objects such as needles, and nails.

Suffocation

A plastic bag is put over the head of the victim, The victim then experiences panic, The head of the victim is pushed forcefully into a bucket of water or urine either until the victim becomes unconscious or just prior to this, Even the pushing down on the head is painful, A large amount of water is put into the mouth of the victim, The victim is strangled around the neck by way of a rope, belt, cloth or some similar object.

Abuse by way of animals

The victim is tied up outside wearing very little clothing or nothing at all this inevitably leads to an enormous number of mosquito bites, It is known from the GULag (system of concentration camps) of the Soviet Union that there have been cases in which victims have been killed in this manner, Some reports state that victims have been intimidated by way of snakes, In one case a victim's hands were put into a sack containing a snake.

Further methods of torture, and abuse

Breaking fingers, and other bones, a bucket of ice cold water is poured over the head of the victim, Particularly in winter the drenched (and in some cases naked) victim suffers severe hypothermia, Breaking the victim's fingers is an especially common type of abuse, Victims are confronted by way of the threat that their fingers will be broken one after the other if they do not comply by way of the will of the torturers.

Refusal of sufficient medical care

People who are ill when they are detained or become ill whilst in detention are punished in part by being denied essential medical care, and even pain killers, External as well as internal injuries commonly occur through abuse or torture, The refusal to provide victims by way of appropriate medical care or attend to their injuries promptly further intensifies, and prolongs their suffering,

Lack of access to a toilet

Over several days the victim is refused access to a toilet or bucket, The victim is thus forced to empty their bowels on the floor of their cell and, if they are tied up, to lie or sit in their urine, and excrement.

Running over a long period of time

The victim must run without stopping, sometimes for longer than ten hours, If the victim is exhausted, other prisoners are ordered to urge the victim on, When the victim cannot even be forced to keep running by being beaten, and kicked, other detainees are commanded to drag the victim along behind them.

14,231 custodial deaths from 2001 to 2010: India must enact anti-torture law

From 2001 to 2010, the NHRC recorded 14,231 i.e, 4,32 persons who passed away in custody in India. Out of this, the majority of the deaths were committed in police custody and the rest i.e. 12,727 deaths resulted in judicial custody from 2001-2002 to 2009-2010, The majority of these deaths were a direct result of such torture in custody. These deaths also reflect only a tiny fraction of the problem by means of torture and resulting custodial deaths in India. The facts remains that not all of the cases of resulting deaths in police are reported to the NHRC. The NHRC does not have jurisdiction over the armed forces under section 19 of the Human Rights Protection Act, Further, the NHRC does not record statistics of torture not resulting into death, Torture remains highly prevalent and its practice is institutionalised, and central to the administration of justice. India has demonstrated no political will to end torture, Torture, and deaths in police custody: Maharashtra tops the chart.

The NHRC recorded 1504 deaths in police custody during 2001-2010 which includes 165 deaths in 2001-2002;2 183 deaths in 2002-2003;3 162 deaths in 2003-2004;4 136 deaths in 2004-2005;5 139 deaths in 2005-2006;6 119 deaths in 2006-2007;7 187 deaths in 2007- 2008;8 142 deaths in 2008-2009; 124 deaths in 2009-2010, and 147 deaths in 2010-2011,9 The Asian Centre for Human Rights (ACHR) has highlighted that approximately 99.99% of the deaths that have taken place in the custody of police could be ascribed to practice of torture. This occurs within 48 hours of the victims being taken into custody. The state of Maharashtra records the highest number of deaths in police custody by way of 250 deaths; followed by Uttar Pradesh (174); Gujarat (134); Andhra Pradesh (109); West Bengal (98); custody in Maharashtra than Uttar Pradesh shows that torture is more rampant in Maharashtra.

state-wise cases of deaths in police custody from 2001-2002 to 2010-2011 is given below:10

State/UT	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Maharashtra	27	26	32	23	20	21	25	25	20	31	250
Uttar Pradesh	11	16	18	7	18	11	32	30	16	15	174
Gujarat	8	17	20	15	20	7	16	13	9	9	134

											4
Andhra Pradesh	16	10	10	13	11	5	9	12	9	14	109
West Bengal	17	16	13	11	8	7	8	5	8	5	98
Tamil nadu	7	17	12	9	7	16	6	7	8	6	95
Assam	10	15	6	4	7	8	12	9	6	7	84
Karnataka	9	16	4	9	5	8	5	3	3	5	67
Punjab	7	9	7	6	6	1	7	5	3	6	57
Madhya Pradesh	7	1	3	2	4	10	10	5	8	5	55
Haryana	5	6	2	2	4	2	9	6	6	3	45
Bihar	2	4	9	3	1	2	8	5	4	6	44
Kerala	4	4	4	6	5	3	6	2	6	2	42
Jharkhand	4	6	3	5	4	3	3	2	5	6	41
Rajasthan	5	6	5	0	7	3	2	4	4	2	38
Orissa	7	1	1	3	2	2	6	2	3	7	34
Delhi	5	2	3	5	3	3	6	0	0	3	30
Chhattisgarh	4	3	2	5	2	3	2	1	1	1	24
Uttarakhand	3	1	2	3	1	1	5	0	0	4	20
Meghalaya	3	3	3	2	0	1	3	1	1	0	17
Arunachal Pradesh	2	2	2	0	1	1	0	2	0	0	10

Tripura	1	1	0	1	1	1	1	1	0	1	8
Jammu &	0	0	0	0	1	0	3	0	0	2	6

Himac hal	1	0	0	0	0	0	1	0	3	0	5
Goa	0	0	0	0	1	0	0	0	0	2	3
Chandiga rh	0	0	0	1	0	0	1	1	0	0	3
Pondiche rry	0	1	1	1	0	0	0	0	0	0	3
Manipur	0	0	0	0	0	0	0	0	0	2	2
Mizoram	0	0	0	0	0	0	0	0	0	2	2
nagaland	0	0	0	0	0	0	0	0	1	1	2
sikkim	0	0	0	0	0	0	1	0	0	0	1
D & n Haveli	0	0	0	0	0	0	0	1	0	0	1
A & n islands	0	0	0	0	0	0	0	0	0	0	0
Daman & Diu	0	0	0	0	0	0	0	0	0	0	0
Lakshadw eep	0	0	0	0	0	0	0	0	0	0	⁴⁹ 0
Total	16	18	1	13	13	11	18	1	12	14	15
	5	3	6	6	9	9	7	4	4	7	04
			2					2			

⁴⁹ <https://thelawbrigade.com/wp-content/uploads/20>

Effects Of Custodial Violence

The ultimate consequences of inflicting torture reaches far beyond the immediate bodily pain. Many of its victims suffer from the problem of post-traumatic stress disorder (PTSD), which tend to includes symptoms like getting flashbacks, extreme anxiety, successive insomnia, frequent nightmares, incurable depression, and frequent memory lapses. The practice of torturing often makes the victim only end up feeling guilty and ashamed. This is triggered by the repeated humiliation that they endure during the torture. Many victims feel that they have somehow betrayed themselves or their own friends, and family. All these symptoms are a part of the normal human response to extremely abnormal and inhuman torturous treatment.⁷⁵ Big organizations like Freedom from Torture have continuously tried to assist the survivors in obtaining medical treatment. Gaining forensic medical evidence has also proven to be of use for obtaining political asylum in any safe country.

Torture is difficult to prove in the Court. This is more so when time has elapsed between the main event and the relevant medical examination. The condition becomes even more worse when the torturer is immune from the prosecution. Many of the torturers use the methods which are designed to provide maximum psychological impact while at the same time leaving only some minimally physical traces as evidence. Medical as well as Human Rights Organizations around the world have collaborated to release the Istanbul Protocol. It is a document which is designed to outline the common methods of torture, the consequences of such torture, and the kind of medico-legal examination techniques that should be used to examine and cure its effects. Typically, the deaths occurring due to torture is shown through the autopsy report as a part of "natural causes" like heart attack. For the survivors, techniques of torture have often lead to long lasting mental and physical trauma. Prevailing physical problems can be very wide-ranging, for e.g, the sexually transmitted diseases, musculo-skeletal problems, brain injury, post-traumatic epilepsy etc. Resulting mental health problems are also very wide-ranging. For eg. the post-traumatic stress disorder, depression, anxiety etc.

The most terrible inheritance of this torture is the death of desire to live. The victims become lifeless, they lose curiosity and an the impulse to form meaningful connection, they stop

finding meaning in life. For the patients, knowing other people and holding conversations become extremely difficult especially if the opposite person is short tempered. They get entrapped in the memory of their trauma. They perpetuate the erasure of meaning from their life, and try to re-enact the original dynamics of though annihilation through mental belief systems like sadomasochism, narcissism, paranoia etc. They tend to ward off their energies against the feelings of mutuality, goodness and hope.

On the date of August 19, 2007, the *American Psychology Association* (APA) by way of conducting a vote barred the participation in any form of interrogative technique that remotely resemble torture. The intervention was directed to stop the prevailing news of widespread torture. At the same time, it also rejected the stronger resolution which sought to bar “all the psychological involvement, either direct or indirect, in the interrogations in the U.S. detention centres of foreign detainees and the citizens who were detained outside the normal legal channels.

The psychiatric treatment of the medical problems that are torture-related will require a very wide range of expert behavior and often times a specialized experience. Commonly prevalent treatments to this are psychotropic medication,

**CHAPTER IV MEASURES
TO COMBAT
CUSTODIAL VIOLENCE**

Domestic Framework for Combating Custodial Crimes

India's legal framework - both constitutional and statutory contains certain provisions that relate to the safeguards concerned with arrest, custodial violence, and other such crimes committed in police custody. The substantive law provides for punishment to a person who causes injury, inflicts torture or causes death to the body of the person who is in custody. The procedural laws on the other hand contain various provisions that safeguard the legal rights of the persons in custody. The Constitutional and other relevant statutory provisions on this matter have been added to by various other significant judicial pronouncements. In addition to that, the Protection of Human Right Act, 1993 also provides for the institution of National and State Human Rights Commissions as well as Human Rights Courts for better protection of human rights of a person in custody. India has successfully ratified, acceded, and signed various International Declarations, Conventions, and Covenants such as International Covenant on Civil, and Political Rights (ICCPR), Universal Declaration of Human Rights(UDHR), International Covenant on Economic, Social, and Cultural Right(ICESCR) etc .

Rights of Accused under Indian Constitution

The Constitution in its part III deals by way of Fundamental Rights. The restrictions given by Article 20, 21, and 22 of the Indian Constitution are very directly relevant to our criminal process. Here, Article 20 (1) bars retrospective operation of penal legislation. Then, Article 20(2) provides a safeguard against the practice of double jeopardy, and lastly Article 20 (3) states that no one accused of an offence can be compelled to be a witness against himself. It need not be said that the constitution protects against testimonial compulsion. Article 21 of the Constitution further provides that nobody should be deprived of their life or personal liberty. The only available exception is when the procedure for the same is established by law. The expression "Life, and personal liberty" which occurs in Article 21 has been subject to multiple interpretation. One such interpretation provides constitutional guarantee against torture, forms of assault or kinds of injury against the arrested person. The following are some of the illustrative decisions in this regard. In *Dastagir v, State of Madras*, the court held that punishment is a major element of custodial torture and is on the face of it unconstitutional. In *Inderjeet v, State of Uttar Pradesh*, the Court held that the various forms

of restrictions imposed in prisons amount to the practice of torture, pressure or infliction. Going beyond this is what the court authorities will call unconstitutional. The Court further extended that the under-trial or convicted prisoner shall not be made subject to any form of physical or mental restraint which is outside the scope of law. In *Sheela Barse v, State of Maharashtra*, AIR 1983 SC 378, Article 22(1) and 22(2) are extremely relevant since their objective is also to ensure that various checks exist in law so as to prevent the abuse of power of arrest, and detention. Article 22(1) further a person arrested shall be informed of the grounds of his arrest. He will also have the absolute right to consult the legal practitioner of his choice. Article 22(2) states that such a person if detained in custody, shall be produced in front of the nearest Magistrate within the maximum period of 24 hours of arrest. This excludes time necessary for the fulfilment of the journey from place of arrest to the nearest Magistrate's Court. Such person shall not be detained in custody beyond the above mentioned period without such Magistrate's authority. The entry of "Police" is made in the State List in the VII Schedule of the Constitution. This makes the State Government mainly in charge of maintaining the public order. Invariably, the police being a part of the civil administration, plays the primary role in maintaining law, and order. This duty is entrenched in the framework for constitutional governance based on the established principles of "Sovereign Socialist Secular Democratic Republic". The purpose is to secure fundamental rights for the citizen. The idea of democratic policing is in line with this and was adopted by the Indian administration at the Conference of Inspectors Generals of Police in 1960.

4.1.2. Code of Conduct for the Police in India (1960)

The Code provides that the police officers must bear a truthful and faithful allegiance to the Constitution. It shall always respect and uphold the citizen's rights. Being a law enforcement agency, they are not supposed to question the propriety or other necessity of any kind of duty that is imposed on them and is enacted by law. They should be enforcing the law very firmly and impartially. This task should be done without the any fear or favour, any feeling of malice or vindictiveness. The police officers must also recognize and always respect the limits of their own powers and functions, They should never ostensibly usurp the mentioned functions of the judiciary. The major duty of the police force is to prevent the crime, and prevailing disorder. The police must recognize that it is the test of their efficiency

that both crime and disorder are absent from the scene. The police personnel recognizes that they are just the members of the public, and all their actions should be in the interest of the their country and community. All India Conference of Inspectors General of Police (1959) had adopted the Code of Conduct for police in India. The police force should clearly realize that the purely efficient performance of their duties will also be highly dependent on the level of agreement and cooperation that they will receive from general public. This will, in turn, also depend on their ability to successfully secure the public approval of their own conduct. And also their ability to successfully earn and retain that earned public respect and confidence. The extent to which they successfully obtain public cooperation will diminish the proportionality and necessity for the use of compulsion techniques or physical force. The police force should also be sometimes sympathetic towards the emotions of general public and their circumstances. And state should be mindful of their welfare. The officers should always be ready to offer their services to the welfare of people and be willing to render necessary assistance to all . They should place their duty before self and should remain calm during crisis. They should be courteous, well-mannered, dependable, unattached and should possess dignity and courage to fight necessary evils. They should cultivate a character and trust for the people. The police must always keep their personal life clean and away from public gaze. They should also recognize the ways and manners in which they can enhance and maximize their own utility to the Administration, and the country.

Punitive Provisions in Criminal Law & Procedure

Consistent by way of the constitutional guarantee, the statutory provisions are contained in Indian Penal Code, 1860, Indian Procedure Code, 1973, and Indian Evidence Act, 1872 for protection of a person arrested in connection by way of the commission of an offence as well as prevention of custodial commission of crimes in police custody,

Punitive Provisions are contained in the Indian Penal Code which seeks to prevent violation of right of life, and personal liberty of a person in custody, The definition in section 44 of the Code which defines the expression “ injury” as covering harm to body , mind, and reputation or property, Section 220 provides for punishment to the officer/authority who

detains a person in the confinement by way of the corrupt or a malicious motive, Section 330, and 331 provide for punishment of those who inflict injury or grievous hurt on a person to extort confession or information in regard to commission of an offence Section 330 therefore directly makes the torture punishable under the Indian Penal Code, 1860 its Sections 330, and 331 read : *Section 330 says, : “whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished by way of imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.”*

Sections 340 to 348 of the Indian Penal Code constitute a group of sections dealing by way of wrongful restraint,, and wrongful confinement, and their aggravations, Of course, they envisage that the confinement itself is illegal –an ingredient prominently brought out by the adjective “wrongful”, Whereas section-348 which provides for punishment to a person who wrongfully confines any person for extorting any confession etc, The section also punishes extortion committed to extract information leading to the detection of offence or misconduct.

The relevance of the Code of Criminal Procedure, 1973, various contain provisions intended to operate as a safeguard against custodial offences ranged from arbitrary arrest detention in custody to compensation to the victims of custodial abuses, Section 50 of the Code talks about ground of the arrest, and right to bail, This section has been regarded as mandatory, particularly in the light to constitutional guarantee, so that non-compliance by way of the section renders the arrest, and detention illegal (*Ashen v, The State, 1987 Cri, LJ 1750*).

The arrested person has right to medical examination if he or she a complaint of torture, maltreatment under section 54 of the Code, Section 56, 57, and 58 related by way of the action after arrest is made, Section 56 of the Code provides that the police personnel making arrest without any warrant shall send the person so arrested before the Magistrate who has

jurisdiction in a particular case or also even before the officer in charge of the police station.

Section 58 provides that officers who is in charge of the police stations shall also report to the District Magistrate or Sub Divisional Magistrate about any case of persons who is arrested without required warrant within the limits of the respective stations. Where the arrest of a person under the Code of Criminal Procedure, 1973 is under a warrant, section 70-8 1 of the Code become applicable, of which sections 75, and 76 are relevant for the present purpose, Section 75 deals by way of notification of substance of warrant, and Section 76 provides person arrested to be brought before Court without delay not exceeding 24 hours . This will be exclusive of the time which would be necessary to undertake the journey from place of arrest to nearest Magistrate Court,

An important provision in the area of police custody is contained in section 160(1) of the Code regarding power of attendance of witnesses, This section of particular importance, in view of the express prohibition, contained in the proviso, against summoning of women of any age, males under fifteen years at the place other than their place of residence, The legislative seems to have taken note of the possibility of abuse of authority if the section is not complied with, Further taking note of the fact that a person in custody may be subjected to subtle influence to make a confession, section 163(1) of the Code expressly provides prohibition of inducement of threat or promise, In case somebody dies in custody of police, the law would requires that a mandatory preliminary enquiry must be undertaken about the cause of death by the magistrate.

Indian Evidence Act, 1872 elaborated that wherein confessions made to Police Officers inadmissible in evidence. Section 25 says that no confession which is made to the police officer shall be proved against any person accused of committing an offence. It also contains provisions for their prevention of custodial abuses, and punitive provisions to ends of justice, Rapes in police custody are normally seen as a stigma on the law enforcing agency by the citizens, Police which is primarily agency for ensuring safety of women, children who were downtrodden is not forgiven by the society if they themselves get

involved in rape cases in police custody, For custodial rape Indian Penal Code amended section 376 IPC which provides special treatment under introduced a new Section 376(2) in the **Criminal Law (Amendment) Act, 1983**, it says an offence of rape committed by a police officer, a public servant, a member of Jail or Hospital staff on a woman in his custody, and enhances the minimum punishment in such cases to 10 years, as against 7 years in respect of other cases of rape, The other relevant provision is that the insertion of a new Section in Indian Evidence Act, 1872 (Section 114A). This Section lays down that in prosecution for rape under sub-Section (2) of Section, 376 of the Indian Penal Code, where any sexual intercourse by the accused is proven, and the subsequent question arises is whether there was consent to such an act, the Court shall presume that she did not consent if the victim makes such a statement in the Court.

When somebody dies in police custody, the law will require a mandatory enquiry by the relevant Magistrate into the causes of such death. This requirement is raised by section 176 of Code of Criminal Procedure, 1973. The recent amendment in procedural law through **Code of Criminal Procedure (Amendment) Act, 2005** which then amended section-176 of Cr.P.C, 1973, and inserted in its sub-section (1), the words “ where any person dies while in the custody of the police replaced by way of a new sub-section, “(1A) where (a) any person dies or disappears, or (b) rape is alleged to have been committed on any woman while such person or woman is in the custody of police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as case may be, within whose local jurisdiction the offence has been committed.”⁵⁰

Besides the above mentioned developments it is noteworthy to mention here that a comprehensive Bill has been drafted, and also introduced in the 14th Lok Sabha by Mr Mohan Singh, Member of Parliament. **The Custodial Crimes (Prevention, Protection, and Compensation) Bill -2006** aims at prevention, and protection of individuals against state supervised custodial crimes. It also provides for adequate compensation in cases of

⁵⁰ <<http://dspace.lpu.in:8080/jspui/bitstream/1234>>

custodial offences. In addition to this, the act provides for the appointment of vigilance Commissioner, the District Vigilance Commissioners for Custodial offences etc. However, the above Bill did not receive the required accent in the parliament and could not be successfully passed.

The Code of Criminal Procedure (Amendment), Act, 2008 was recently passed by Parliament, and received has provided custodial safeguards for arrestee persons in police custody, The salient features of the Act are the followings;

1. Curbing the power of arrest
 2. Protection of women in custody
 3. Victims, and Witness Protection
 4. Victims Compensation
- Major highlight of the Act - Power of police to Arrest stands restricted, Law must change by way of the needs of a changing society,, and must in the process safeguard the interest of innocent as well, by way of a view to protect the dignity, and liberty of its citizens, Indian Government has made some sweeping changes in the Powers conferred on Police to arrest an accused, The amendment clearly lays down conditions which need to be met before a person can be arrested, By doing so, the government has given credence to the most basic Right of its citizens – *Right to Live by way of Dignity*,
 - New sections 41A, 41B, 41C have been introduced to provide for detailed mandatory procedure in matters of arrest under various circumstances, and also to provide for control room in every district, state, and police headquarters, etc, in order to display the names, and addresses of persons arrested along by way of the details of the person making the arrest, Arrested person has also been given the Right to meet an Advocate of his choice during interrogation, though not throughout the interrogation,
 - A number of safeguards in matters of arrest of a woman have been incorporated in the new proviso to Sec,46,

- Provisions have been incorporated in Sec,54,, and new Sections 55A, and 60A of the CrPC Act to provide further safeguards, and mandatory provisions regarding examination of arrested persons by Medical Officers,, and taking care of their health, and safety, and such allied matters,
- A new proviso to Sec, 157 provides important safeguards to victims of rape,
- Provisions have been incorporated in Sec,161, and 164 about use of audio-video electronic means while recording the statements of the accused, Analogous provisions have been incorporated in the new proviso added under Sec,275(1),
- Detention of the accused in custody, and his production before the Magistrate are now regulated by new provisions, and explanations inserted under Sec, 167,
- Maintenance of the Case Diary by the Police Officer will now be regulated by the new sub-sections 1A, and 1B to Section 172,
- A very important provision has been made in newly inserted sub-section 1A of Sec, 173 wherein its is provided that the investigation in relation to rape of a child may be completed within 3 months from the date on which the information was recorded by the Officer incharge of the police station, If the offence relates to Sec,376, 376A, 376B, 376C, and 376D of the IPC, the police officer has also to mention in the case papers whether the report of medical examination of the woman has been attached,
- Unrestricted, and unlimited powers of Arrest so far enjoyed, and exercised by the Police stand restricted, and conditioned, both in case of cognizable as well as non-cognizable offences,
- Newly inserted Sec, 1 95A entitles a witness or any other person to file a complaint in relation to an offence under Sec,195A of the Indian Penal Code,
- While conducting proceedings under Sec,242 of the CrPC, the Magistrate is now required to supply in advance to the accused, the statement of witnesses recorded by the police during investigation,
- The proceedings for sexual offences are now required to be held, as far as practicable by a court presided over by a woman. Newly inserted Sec, 3 13(5) states that the court may take the help of prosecutor, and defense counsel in preparing relevant questions, which are to be put to the accused, and the court may permit filing of written statement under Sec,313 by the accused as sufficient compliance

of the section,

- Relating to the camera trial given under Section 327(2), a new proviso has been inserted to state that the Camera trial shall always be conducted by a woman judge or magistrate,
- The scope for the definition of victim has been amended so as to include the victim's guardian or legal heir in the definition itself,
- Referring to amendment in Sec. 24, now the court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section,
- Newly inserted provision section 357A incorporated a newly introduced Victim Compensation Scheme to alleviate the high sufferings of the victims, and to also provide for important safeguards to their Right,
- Amendment to Section 372 also provides that all the victim shall have Right to Appeal against the order passed by court. The right to appeal is allowed only in cases where the court order acquits the accused, convicts him for a lesser offence, or imposes an inadequate compensation.

4.1.6 Law Commission's Initiatives:

The first Law Commission of India (LCI) was appointed in August 1955, and since then eighteen law Commissions have been appointed, and altogether, two hundred five reports have submitted to the Government of India till date, While dealing by way of 'normative law reform', the Law Commission of India had, on a number of occasions, examined the powers, and functions, the emerging role, and the operational problems of police,, and made numerous valuable observations, and recommendations, however that many of these recommendations could not see light of the day,

In view of the importance of investigation of crime for law –enforcement, the Law Commission of India could not confine itself to reform of laws relating to investigational procedure but had also dealt by way of multi-dimensional, and even non-legislative issues relating to investigation of crime by police, In its the 14th Report on Reform of Judicial Administration (1958), the law Commission for the first time made an in-depth study of

the problem of faulty or slipshod investigation by the police, The Commission had identified the principal defects in investigation, and suggested a number of important non-legislative measures to ensure efficient investigation by police,

These measures includes: As far as possible, the investigation of an offence should be conducted by a single police officer, preferably a senior officer, by way of the assistance of junior officers.

As far as practicable, the investigating wing of the police should be separated from that dealing by way of law, and order,

The question of systematized training for police officers in proper methods of investigation should receive urgent attention of the State Governments, Necessary legal assistance should be provided to investigating officers. It is necessary to ensure strict, and effective supervision over investigations by adopting certain measures such as frequent visits of senior police officers to police stations, and the appointment of special officers of the rank of a deputy superintendent of police,

To induce public cooperation which is extremely necessary for the police to perform their difficult work of investigation, the law commission emphasized the need for an orientation in the outlook of the police officers towards their duties, and their attitude towards the public.

The 48th Report of Law Commission (1972), and the 69th Report of Law Commission of India(1977) dealt by way of the issue of admissibility of confessions made to senior police officer in evidence (a confession recorded by Superintendent of Police or higher rank should be admissible in court of law). However, in its 185th Report of Law Commission (2003) examined this subject in great detail, and observed, "It is true, the provisions of certain special Acts dealing by way of terrorist or organized crime (such as TADA or the POTA or MOCOCA. recording confessions by, and before senior officers of the level of Superintendents of Police, and for treating them as admissible, subject to certain conditions. There is good reason for doing so, In the case of such grave offences, like terrorism, it is normal experience that no witness will be forthcoming to give evidence

against hard-core criminals, Further, these offenders belong to a class by themselves requiring special treatment, and are different from the usual type of accused. The exception made in cases of 'terrorists' should not, in our view, be made applicable to all accused or all types of offences. That would erode seriously into Article 21, and sections 24, and 25 of the Evidence Act, and violate Article 14, Exception cannot become the rule,

In view of the growing menace observed about the police misdeeds conducted on women, the 84th Law Commission of India report on Rape, and Allied Offences dealt inter alia by way of an important issue, viz, association of women social workers by way of investigation about these cases. The Commission had also suggested that a number of various other amendments in the Code of Criminal Procedure, 1973 were there which could not provide for the adequate legal protection or required remedy to women in the concerned matters.

The 113th Report of the Law Commission of India is dealt by the way of question which extend the powers of police to undertake coercive measures during the process of interrogation while being in police custody. During this process, they also inflict injuries on the suspects. The Commission further recommended the proposal of inserting section 114 B (1) in the Indian Evidence Act, 1872 for prosecuting the police officer for the offence which constitutes bodily injury. If there is any available evidence to show that such injuries were caused during the continuance of period of investigation while being in custody of police, the court may also presume these injuries were caused by the police officer having complete custody of such persons during the course of police custody. The poor and the downtrodden were ignorant because they had little or almost no political or financial power. Thus, they were largely unable to protect their interests. On the other hand, the affluent members of the Indian society are not subject to any form of torture as the police is usually afraid of their resources and connections. The members of the weaker or poorer sections of the society are often arrested quite informally and then kept in long police custody without providing them or their relatives the details of such arrests. The details are not even entered in the police records. In the course of such informal detentions, people are often subject to intense torture many a times resulting in death. In the event, death takes place in police custody, the body of the deceased person is usually disposed off without giving any hint ana in most

situations, a case of suicide or accident is made out. The records are also manipulated in order to protect the accused police personnel. The friends and relatives of the victim are usually unable to seek protection under the law due to poverty, ignorance, and also illiteracy. Even if an organization voluntarily takes up the case in the form of a public interest litigation, an effective or speedy remedy is not available in this scenario. This often results in the officers at fault to go scot-free. Such a situation gives rise to the belief that protection of law is only meant for rich and not poor. The report discussed various issues like custodial crimes, custodial justice etc. The report also recommended that several changes in the existing Indian law and procedure including the preventive, punitive, and compensatory measures are yet to be put in the penal and procedural laws. The primary recommendation of the above report was the fixation of the amount of compensations i.e. Rs twenty five thousand in case of bodily injury to Rs One Lakh in case of death. In addition to this, the suggestion was that Government may also recover any amount that it pays as compensation under this section. This may be done wholly or partially as the government thinks it proper. This was supposed to be an innovative approach of restorative justice which was based on event of individual accountability which also suggested by way of custodial crimes.

The 177th Report of Law Commission of India on Law of Arrest, released in 2001, made a variety of recommendations for the safety and well being of the detainees. The Report proposed to amend the Code of Criminal Procedure, 1973. The central issue in the report facing the entire criminal justice systems was to ensure that a proper balance is struck between the maximum extent to which an accused person could be allowed to use its resource of information on one hand and his/her right against self incrimination against the other. Right to silence is a natural right and no person can be forced to give any kind of evidence against his own self. The right to remain silent is one legal protection that is enjoyed by the accused person during the course of investigation. The 180th Report of the Law Commission of India has elaborated on the Right to remain silent. The right to remain silent has a variety of facets. One such facet is that the burden of proof is upon the State or more precisely upon the prosecution to prove that accused person is guilty. Another facet is that the accused is presumed to be innocent until proven guilty beyond reasonable doubts.

The third facet is that the right of the accused person against self incrimination, also called as the right to remain silent exists. There is no exceptions to this rule. The Court can compel the accused to submit to investigation, but cannot compel him to give self incriminatory statements.

Custodial Jurisprudence: Role of Judiciary

Indian Judiciary through its various pronouncements has evolved the jurisprudence on custodial violence by way of custodial crimes in custody. The example includes various forms of arbitrary arrest, dehumanizing techniques used for interrogation resulting in torture, compensation to the victims, and ultimately prosecution and punishment for torturer. In a leading case of *Joginder Kumar v, State of Uttar Pradesh* (1994 Cr. L.J. 4SCC 260), the Supreme Court has examined the power of arrest by police, and observed:

“No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person , it should be prudent of a police officer in the interest of protection of the constitutional rights of a citizen, and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness, and bonafides of a complaint, and a reasonable belief both as to the person’s complicity, and even so as to the need to effect arrest, Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental rights to personal liberty, and freedom, that such arrest is necessary, and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House, and not to leave station without permission would do, ”⁵¹

Further, the Supreme Court observed that an accused held in custody is entitled to have one friend, relatives or any other person known to him to be informed that he has been arrested

⁵¹ *Joginder Kumar v State of Andhra Pradesh.*

and also the location where he is being detained. It is the duty of the police officer to inform the arrested person of his rights about the time when he is brought to the station; Police officer shall also make an entry about this in the diary. These protections from such powers must be held to be flowing from Article 21 and 22 (1) and should also be enforced strictly. It shall be the Magistrate's duty to make sure that these requirements are complied with. In the matter relating to custodial violence in *Sheela Barse v, State of Maharashtra* the court has held the following-

- Four -five police lock up should be selected in the reasonably good localities where female suspects specifically could be kept, and such suspects should be guarded by the female constables,
- Female suspect should not be kept in the lock ups where the male suspects are also detained,
- Interrogation of female suspects should be carried out in the presence of female police officers/ constables,
- Whenever a suspect is arrested by the police, and taken to the police lock up, the police shall immediately intimate the fact to the nearest legal aid committee,
- Surprise visits to the police lock ups in the city should periodically be made with the view of providing the arrested person opportunity to hear all the grievances, and ascertain conditions of the police lock up,
- As soon as the person is arrested, the police officer must obtain the names of their relative or friend from them so that they could be informed about his/her arrest.
- The Magistrate before whom such person is produced shall enquire from him about any complaints of maltreatment or torture.

The Supreme Court widely elaborated the right against self –incrimination during interrogation in police custody in its various judgments, In Case of *Nadini Satpati v, P,L, Dhani (A,I,R, 1978 SCC 1075)* the Court held in support of the right against self-incrimination and to remain silent. It upheld the fact that all modes of mental, physical, direct, indirect pressure will be sufficient and substantial to obtain information from the

accused and consequently compel them to give a testimony violative which is violative of the right against self-incrimination. The court also ruled that such a compulsion may also be presumed in the matters of custodial interrogation which is conducted by the police. It was further observed that the police often tends to permit lawyers assist the accused if he is able to afford one. However, the court did not opine that it is the duty of state to provide the accused with a lawyer in case he cant afford one. The Court also acknowledged the right to remain silent against cases of self –incrimination. The accused is never bound to answer the self – incriminatory questions. But he also does not have the right to remain completely silent, In other words, non-incriminatory questions may be asked by the Court. And the accused is bound to give answers to such questions if there is no clear tendency.

The highest court of the country in case of *Bhagwan Singh vs, State of Punjab* has observed that it is legitimate for the police to interrogate and even arrest the suspect on being given credible material but in case such an arrest takes place, it must be in accordance by way of the law. The interrogation should not mean the process of compulsorily inflicting injuries. It should be purposeful i.e. it's purpose should be to make an effective investigation. Torturing of a person and using the third-degree methods on them are of medieval characteristic. These practices are by their very nature barbaric, and contrary to law. The police would accomplish behind the closed doors precisely what our laws forbid.

Few cases of custodial violence reach to the court (Sokhani, 2005), Even when formal prosecution is launched by the victim or next of kin, no direct evidence is ever available to substantiate the prevailing charge of torture which resulted in death, since the police lock-up where this happens are generally away from the public gaze. The issue was dealt by Supreme Court in cases of *Munshi Singh Gautam v, State of Madhya Pradesh*, the Apex Court observed;

“Rarely in cases of police torture or custodial death, is direct ocular evidence available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died, Bound as they are by the ties of brotherhood, It is not known that police

personnel prefer to remain silent, and more often than not even prevent the truth to save their colleagues,”

The Supreme Court took reference of the 135th Report of Law Commission of India that that section 114(B) shall be inculcated in the Evidence Act to introduce the concept of rebuttable presumption so that the injuries that were sustained by a person in the police custody shall be presumed to be caused by the officer in charge. Such a provision perhaps will have a restraining effect on officers indulging in torture in police custody, The Supreme Court recommended that it is appropriate that such changes in law were not only to prevent custodial crimes but to also ensure that these crimes do not remain unpunished for a long time. In addition to this, the Court noticed that the courts are required to change their outlook and approach especially in the case involving custodial crimes. The Courts should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach.

In the landmark judgment of *D.K. Basu vs, State of West Bengal*, the initiation of the Custodial Jurisprudence including jurisprudence on the law of torture towards the infringement of fundamental rights was done. The citizens are entitled to receive the compensation from the State, the quantum of such a compensation would highly depend on some peculiar fact of each of the case. The punishment provided under section 330 of Penal Code is definitely inadequate to repair the wrong that is done to the citizen. The Supreme Court also lamented about the control of the police in their power of arrest, and therefore issued some guidelines to carry out the arrest and detention. The Courts also have the force of law. An officer of the police force who willfully or inadvertently ignores the directions given by the Supreme Court can be tried under the relevant provisions of the Indian Penal Code and the Contempt of Courts Act, 1971.

Police Officer's Obligation after arrest

1. The Police officers who is carrying out the arrest and those who are handling interrogation of the arrested persons should bear an accurate, clear and visible form of identification. The name tags should clearly display their respective

designations. The detailed particulars of all given such police officers who will be handling interrogation time of an arrested person shall be recorded in the register held by such officer;

2. The police officer who is carrying out the process of arrest shall mandatorily prepare the required memorandum of arrest. Such a memorandum shall necessarily be attested by minimum one local witness. The witness may be a person who is a family member or some respectable person from the locality where the person was arrested. The memorandum shall also be signed by the person arrested.
3. A person who had been arrested/detained and was being held in the custody of the shall be entitled to have someone being informed as soon as practicable of such arrest.
4. The details like the time, place, and venue of the arrest shall be notified with the help of Legal Aid Committee if the next friend or relative of the arrested person happen to live outside the given district or town.
5. The person arrested shall be made aware of all his right like the right to have his family or friends being informed of his arrest;
6. An entry must also be made at the place where such arrested person is detained. This entry shall successfully disclose the names of friends who has been informed of the arrest, and the names, and particulars of the police officials in whose custody the arrestee is;
7. The arrested person should be examined at the time of his/her arrest, and all forms of injuries on his body must be entered in the "Inspection Memo". This memo must be signed by the arrested person as well as the police officer effecting such arrest and the copy of such arrest must be provided to the person arrested.
8. The arrested person should also be subject to some form of medical examination conducted by a trained doctor mostly every 48 hours during the detention.
9. Copies of the mentioned documents including the mentioned memorandum of arrest referred above must be sent to the nearest Magistrate for his record.

10. The arrestee may be permitted to meet the lawyer of his choice during the process of interrogation.
11. A special police control room should be established at all the district levels and the state headquarters wherein the information regarding such arrests and the place of his custody must be communicated by the police officer causing such arrest.

People's Union for Civil Liberties (PUCL 2003) has conducted a study to find out the implementation of Supreme Court guidelines in carrying out arrest, and detention by police in Bhubaneswar, and Cuttak cities of Orissa State, The findings show that in spite of the Court directive the police continue to detain people without maintaining any record, and torture them during such illegal detentions, The right of the arrestees to be produced before a magistrate within 24 hours of the arrest is also continues to be grossly violated, In none of the police stations the guidelines have been displayed on the wall or on a notice board for information, and awareness of public even though the Supreme Court in their order have specially directed for displaying the same in every police station, The in-charges of Police Station plead that they have not been issued any specific instructions by the higher-ups in this regard nor is there any budget allocation for that, The allocation for expenses on foods for detainees is ridiculously low, As reported by the Police Officials interviewed, the approved amount for a detainee's food expenses is Rs,2/- per meal, Government does not provide funds to the police stations for meeting minimum expenses like printing of registers, and formats to comply by way of the directives of the Supreme Court, The police officers reportedly get the stationeries printed by paying from their own pocket, Arrest registers are being maintained in all the police stations, However, some irregularities in issuing of Inspection, and Arrest memos were noticed, The registers are maintained only from the month of May 2002, It seems that prior to this there was no system to monitor whether the guidelines were being followed or not, There is no separate lockup room, except in a very few police station, for the women detainees, In some police stations it is being used as garbage room, The list of the arrested people displayed at the Police Control Room is not updated.

It is noteworthy to mention that India being party to various UN Declaration, Convention,

and Covenants is under an obligation to take effective steps to curb custodial crimes in police custody, This obligation is also reflected in Article 51 of the Constitution of India, The Parliament has also enacted the laws giving effect to International obligation which are contained in the various Declarations and Conventions. The courts have also ensured the effective implementation of these norms. The Court interpreted the domestic laws in such a manner that it gave effects to the implementation of these international norms. It would be highly worthwhile to refer some landmark decisions, In case of *Francis Corlile Mullin V, Administrator , U,T, of Delhi (A,I,R, 1981 SC 608)* the Supreme Court provided the due recognition to international norms while also interpreting the Article 21 of Constitution of India. When the Court observed :

“ any form of torture or Cruel, inhuman degrading treatment would be offensive to human dignity, and constitute an in road into this right to live, and it would, on this view, be prohibited by Article 21 unless is in accordance by way of the procedure prescribed by law, but no law which authorizes, and on procedure prescribed by law, which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test or reasonableness an non-arbitrariness it would plainly be unconstitutional, and void as being violative of Article 14 and 21, It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the Universal Declaration of Human Rights, and guaranteed by Article 7 of the International Covenant on Civil, and Political Right,”

In *Nilabati Behara vs, State of Orissa (A,I,R, 1993 SC 1960)* , the Apex Court observed that all forms of torture and cruel sdegrading treatments and punishments fall within it the purview of the Indian Constitution. Articles 2 1,32, 142, and 226 contravention of human rights, and fundamental freedoms by State, and its agents claim for monetary compensatory in petition under Articles 32, and 226 in public law- same only mode of redress available for contravention. It is acknowledged remedy, Court has obligation to grant relief formally, and finally laid down, and rejected the defense of sovereign immunity which is not available in the cases of violation of fundamental rights of torture victims. The court

judgment also referred to Article 9(5) of the International Covenant on Civil, and Political Rights, indicated that the only enforceable right to the reasonable compensation is not only alien to the concept of enforcement of legal rights but it is also violative of such legal rights.

There is a growing concern in India about issues related to the human rights. The Parliament enacted the protection of human rights Act, 1993, According to Section 2(d) of the Protection of Human Right Act, 1993 “ Human Rights” means “ Rights relating to Life, Liberty, and Dignity of the society in general and individuals in partcular which are guaranteed by the Constitution. These rights are also embodied in International Covenant endorsable by court in India, The Act also provides for the constitution of National and State Human Rights Commissions for an advanced protection of several human rights of the citizens in this country.

The National Human Rights Commission, since its inception, has been addressing the problem of custodial violence including torture, rape, death, and disappearance in police custody. On 14 December 1993, the Commission issued of its instructions to the All Chief Secretaries of all the States, asking them to direct all the District Magistrates, and th e Superintendents of Police shall report directly to Commission without any delay in any case any instance of death or rape in the police custody arises within twenty four hours of its occurrence. Failure to send such reports, it was made clear, wound lead to a presumption by the Commission that the effort was made to suppress the facts, (Annual Report of the NHRC, 1994-95)It is not enough for the Commission to react to curb the torture, the Commission is of the view that the recommendations of the Indian Law Commission (ILC) made in its 113th Report of 29th July 1985 on a reference by the Supreme Court of India, should be acted upon, In that recommendation, the ILC suggested the insertion of a section 114 (b) in the Evidence Act, 1872, thus introducing a rebuttable presumption that injuries that are sustained by a person in the police custody might be presumed to have been caused by some police officer, In the view of this commission, such a provision could well have a restraining effect on of engaging in torture, Further, this commission supports the recommendation of the Indian Law Commission that Section 197 of the Criminal Procedure Code be amended to remove the necessity of sanction for the prosecution of a police officer where prima face case has already been established, in the enquiry conducted

by session judge. This Commission also endorsed the view that the National Police Commission in its first Report of February 1979, suggested that a mandatory enquiry by the session judge in every case of custodial death or rape or grievous hurt shall be conducted.

In its endeavor to ensure that reporting on custodial death is accurate, and timely, the NHRC had recommended to the States, and Union Territories that the latter videos film of post-mortem examination and send the cassettes to the Commission, by way of a view to prevent manipulated Post-mortem report helps those responsible for serious violation of human rights, Apart this, the Commission moved further, and recommended to the Government of India that accession to UN Convention against Torture, and Other cruel inhuman or Degrading Treatment or Punishment, 1984,(NHRC, annual report,19997-98),

At the disposal of custodial violence cases, the commission by recommending registration of cases against misdemanoring officers, and making payment of compensation to the victims or next of kin mandatory. Because on an overwhelming majority of the complaints received by National Human Rights Commission concerning the police. (Annual Report of NHRC - 2003-2004),

NHRC's Best Practices for combating custodial crimes

1. On Custodial Deaths/ Rapes

- Reporting of Custodial Deaths/Rapes by way of 24 hours(December 14,1993)
- Video Filming of Post-Mortem Examination in case of custodial death (August 10, 1995)
- Model Autopsy Forms, and Additional Procedure for Inquest(March 27,1997)

2. On Visit to Police Lock-ups, Arrest, and Polygraph Test

- Visit of NHRC's Officers to Police Lock-ups (August 1,1997)
- Guidelines on Pre-Arrest, Arrest, and Post-Arrest(November 22,1999)
- Guidelines on Polygraph Tests(January 11,2000)

3. On Human Rights Cell, and District Complaint Authority

- Establishment of Human Rights Cell in State Police Headquarters (August 2, 1999)
 - Establishment of District Complaint Authority(December 24,1999) (For details see National Human Rights Commission's Guidelines/Instruction (2000))

In its Annual Report (2005-2006), the Commission mentioned that Government of India has informed that a task force of Ministry of Home Affairs, Ministry of External Affairs, and Ministry of Law, and Justice, working on the process for ratification, and make a legislation to be acted upon it, NHRC played a proactive role, during the year 2003 -2004, the Commission directed its investigation Division to look into 3538 cases, as compared by way of 3005 cases in the preceding year, Of these cases 2918 related to the 'collection of facts'(in respect of complaints alleging deaths in fake encounters, or the violation of human rights resulting from false implication in cases, illegal detention, torture, and other police highhandedness) from different parts of the country, In 51 instances, however, the Commission directed that teams of the Commission conduct inquiries on the spot, These inquiries were conducted mainly in Uttar Pradesh, Delhi, Haryana, Bihar, Punjab,

Rajasthan, and Madhya Pradesh (Annual Reports of National Human Rights Commission from 1993-04 to 2003-04),

Since its establishment in October 1993 till 2003-04, the National Human Rights Commission (NHRC) has directed that interim relief to the extent of Rs, 9, 91, 52, 634/- to be paid in 603 case to the victims or next of kin of the human rights violations ranging from Rs, 10,000 to 10,00000 under the section 18(3) of Protection of Human Rights Act, 1993 and criminal prosecutions have been launched against 167 person(144 policemen, and 23 civilians from 1993 till 1996-97), The Commission has received intimations of 13,281 deaths having occurred till date in police, and judicial custody, While many of these cases were attributable to deaths due to natural causes like illness, and old age, cases of custodial deaths were brought to the notice of the Commission resulting from illness aggravated due to medial negligence or due to violence by public servants or even suicide, During the period of review (2005-06), the Commission recommended payment of interim relief, in 14 cases of custodial deaths, to the kith, and kin of the victims, amounting to Rs, 8,50,000/- including 6 cases of custodial deaths in police custody, These are besides 1,245 cases of Punjab Mass Cremation, where till the end of October, 2006, a total amount of Rs, 23,24 cores has been recommended by way of monetary relief to the next of kind of the deceased(NHRC Annual Report, 2005-2006),

Realization of Right to Reparation of Victims of Custodial Crime

The NHRC had received a complaint from one Raj Kumar Vij of Varanasi alleging that his son, Rakesh Kumar Vij had been subjected to severe physical torture by the Uttar Pradesh (UP) Police, This had necessitated the hospitalization of Rakesh in order to save his life, The complainant alleged that the police had illegally detained his son in connection by way of a murder investigation, It was mentioned in the petition that the victim was ill-treated, and tortured, and that electric shocks had been administered to him by making him urinate on a live electric coil - in order to elicit information about the murder, He was also not allowed to meet any family member.

The Commission subsequently received a number of petitions from various non-governmental organisations, and social activists regarding this case, Taking cognizance of the matter, the Commission issued notice to the Director General of Police, UP, The report received from the Senior Superintendent of Police, Varanasi stated that the victim had sustained injuries as a result of a fall while trying to run away from police custody, It also mentioned that Shri Rakesh Vij had a criminal record, The petitioner, when asked to respond, refuted the police version, The Commission then directed its own Investigation Division to inquire into the incident, The report of the Investigation Team affirmed illegal detention, and severe torture of the victim, The inquiry by the State CBCID, initiated by the UP Government, substantiated the Investigation Team's report,

The Commission also asked the UP Government to constitute a Medical Board to assess the extent of physical disability suffered by the victim, The Medical Board, gave a report to the Commission, stating that the victim did not suffer from any gross structural damage,, and that most of his complaints were subjective, The report also stated that the patient had made a good recovery, and that all his medical test results were within normal limits, The complainant, however, in a communication to the Commission, expressed his doubts about the impartiality, and trustworthiness of the medical report, He requested the Commission to assess the authenticity of the medical report,

In view of grave apprehensions of miscarriage of justice, the Commission got the victim examined by the Delhi Trauma, and Rehabilitation Centre, which gave an entirely different assessment, Due to the discrepancies between the two medical reports, the Commission then directed that Shri Rakesh Vij be referred to the All India Institute of Medical Sciences (AIIMS) for reassessment of his health status, The Commission also directed the State Government to bear all the medical, and travelling expenses of the victim,

According to the report from AIIMS, the victim's spinal cord was compressed leading to deterioration of power in his lower limbs, and in his neurological functioning in lower limbs, sensory loss of bladder, and bowel movement, There were 60 to 80 per cent chances for improvement, but only if the victim undertook high-risk surgery, He was suffering

from hearing loss, and some of his teeth were missing, He was suffering from severe Post-Traumatic Stress Disorder by way of no proven treatment,

The Commission was thus convinced that police officials had perpetrated custodial violence, brutal or savage in nature, on Shri Rakesh Vij, The Commission was also of the opinion that because of this torture, the victim had suffered trauma, and stress, and had been rendered incapable of living normally for the rest of his life, This was a case of a gross violation of human rights of a citizen resulting from barbaric acts of torture perpetrated on him, The State was, therefore, liable to compensate Shri Rakesh Vij for the damages suffered by him, The Commission thus directed the UP Government to pay Shri Rakesh Vij Rs,10 lakhs by way of immediate interim relief, It was also directed to arrange for the complete medical treatment of Shri Vij at AIIMS, New Delhi or PGI, Lucknow, as Shri Vij preferred, The expenses of the treatment as well as the traveling expenses of Shri Vij, along by way of one attendant, from his native place to the place of medical treatment, would also be borne by the State Government,

The Commission also directed the prosecution of the police officers found responsible for perpetrating various acts of torture on Shri Vij, As recommended by the State CBCID, disciplinary action is to be taken against five police personnel, including the Senior Superintendent of Police, and a Superintendent of Police, Varanasi, The Commission has also issued notice to the concerned doctors from Varanasi asking them as to why recommendations should not be made to the State Government of UP to initiate appropriate disciplinary action against them for giving incorrect report/findings about the status of health, and extent of physical disability, and incapability suffered by Shri Rakesh Vij,

The Government of Uttar Pradesh reported to the Commission its acceptance of the Commission's recommendations by way of regard to the prosecution of errant police officials as also in respect of payment of compensation to the victim.

Section 13(2) further provides that 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,

Section 15 of the Protection of Human Rights Act, 1993 protects those who give evidence before the Commission, It also provides for prosecution of those who give false evidence, Medical personnel have a crucial role in unearthing vital evidence in cases of allegations of torture, and custodial violence, They have a duty to ensure that an accurate description of the victim's injuries is provided to the Commission, In this case, the Medical Board constituted by the Government of Uttar Pradesh gave a misleading report to the Commission on the extent of injuries suffered by Shri Rakesh Kumar Vij, The Commission, however, got a further assessment made by the Delhi Trauma, and Rehabilitation Centre, and then by the All India Institute of Medical Sciences (AIIMS), The Commission, using the powers conferred on it by its Statute, recommended the initiation of appropriate action against those who tried to mislead the Commission, Under Article 10(1) the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment it is stipulated that each State Party must ensure that the educational and other related information about the Prohibition against Torture is completely and fully included in the training modules of law enforcing personnel. Article 10(2) further requires that each State Party to the convention include this type of prohibition in the types of rules/instructions that were issued towards such persons. In other words, medical personnel not only have a role in the prevention of Torture but are duty bound to do so (Custodial torture case of Rakesh Kumar Vij : Uttar Pradesh Case No, 12982/96-97)

Recently, the National Human Rights Commission (NHRC), in collaboration by way of Penal Reform, and Justice Administration (PRAJA), organized a two day seminar on '*Custodial Justice*' on March 30-1, 2006, at Vigyan Bhawan, New Delhi,

Seminar was to highlight the fact that custodial torture is preventable, and that it is the responsibility of the State to protect the rights of people in custody, The main deliberations the aforesaid seminar after the are;

- The violations in police custody are reported during investigations, resulting in deaths, and physical torture,
- NHRC, as a monitoring body over deaths, and violence in police custody, has emphasized scientific, professional, and humane approach towards persons detained for investigation,
- The investigation need to be carried out expeditiously, and in a given time frame, The guidelines for arrest, set out in the D,K, Basu Case by the honorable Supreme Court have emphasized time, and again for compliance from appropriate state authorities, Besides, it has urged upon senior leadership to involve themselves in the task of investigations, and custodial management of the detainees, Full use of scientific techniques, and forensic science should be made to obviate resorting to physical torture during interrogations, Training in interrogating skills *insince quo non* of all investigations by the police,
- There should be zero tolerance for any violation of human rights in custody, In cases where misconduct or guilt of police personnel is established, it should be ensured that the penalties imposed should be commensurate by way of the misconduct/guilt,
- There is a strong need to bifurcate the police personnel into two separate wings : one relating to investigation, and the other for law, and other duties, Accordingly, the personnel should be trained to specialize in investigation procedures, This will definitely help in speedy disposal of the cases,
- To imbibe above practices, training is to be taken as a continuous process of learning, and to be used by way of the purpose of changing the attitudes, and mindset of the police personnel (NHRC Annual Report-2005-2006),

More recently, the National Human Rights Commission (NHRC) organized a two-day Workshop on '**Detention**' from 11th -12th October 2008, The workshop was organized as a

part programme to commemorate the 60th Anniversary of Universal Declaration of Human Rights in the dignity, and justice for detainees Week (from 6th to 12th October, 2008), designated by the Office of the High Commissioner to pay special attention to the conditions of detainees in prisons, police custody, and other places, It also marked the yearlong campaign to celebrate the 60 Years of UDHR, In his inaugural address NHRC chairperson has laid down stringent reporting requirements for custodial deaths, and rapes, and issued guidelines on arrest, He added that the hallmark of any society is the way it protects, and promotes rights of the citizens including person under detention, He also highlighted the paradox of the 20th century which witnessed a large number of violations across nations, and across societies despite a plethora of human rights standards, and instruments evolved under the United Nations (Human Rights News Letter, Vol, 15 No, 8, October, 2008), Based on the deliberations in the Workshop, the following recommendations are made by the Commission in the context of detention in police custody;

- The Convention against Torture inter alia seeks to prohibit torture in custody, Though India has signed the Convention against torture, it has not yet ratified it, The Central Government must take immediate steps in this regard,
- It was also suggested that the penalty inflicted on the delinquent police official responsible for torture should be in proportion to the degree of torture by such officials rather than a mere reprimand or transfer,
- In case of deaths in custody, as per the present practice, the police administration is required to send the report within 24 hours of its occurrence to NHRC, In accordance by way of the amendment made to Criminal Procedure Code, 1973(Section 176(1) of the Code) an inquiry by a judicial magistrate is made, There is need for scrupulous implementation of procedure established under Section 176(1) of Cr, P,C, In addition, forensic experts, and laboratories must be involved as their expertise, and scientific manner of investigation can assist in providing accurate, and reliable evidence,
- Government should take steps to separate the investigation wing law, and order

wing, as decided in the case of Prakash Singh vs Union of India(2006, 8, SCC 1),

- All sorts of unlawful detention should be severely dealt with,
- In case of the detune is found unlawful detained, there is a need to have provision for interim relief/ compensation

In view of the above, it is clear that despite innovative interventions of NHRC in the police functioning in general, and police custody in particular, incidents of custodial crimes are increasingly, This shows that police establishment is not serious to curb custodial violence mainly due to the impunity provided to them for such crimes, The functioning of NHRC in dealing by way of custodial violence has been criticized by various individuals' experts, and organizations working in the field of human rights (Dhavan 2001,2002, 2004, ACHR, 2008, HRW, 2006)

International Framework to Combat Custodial Violence

“Custodial violence”, and abuse of police power are not only peculiar in India, but they are widespread. It has also been the major concern of international community because this problem is universal, and its challenges are almost global. Some of the complex issues such as causes, consequences, and prevention of torture as well as reparation, restitution, and rehabilitation of victims of torture lead to global movement against torture led by United Nations. In this context, the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) has a major holding at the international level. The Inter- American Convention to Prevent, and Punish Torture (1987), and European Convention for Prevention of Torture, and Inhuman or Degrading Treatment or Punishment (1989) have given the momentum to the movement at the regional level, At present, 146 countries are party to the Convention against Torture (136 countries ratified, and 10 signed the Convention) as well as 46 have countries ratified to its Optional Protocol, and 25 signatory countries which have incorporated the legislative, judicial, administrative, and other measures contributed to the movement at domestic level, India has signed the Convention

against Torture, and Other Cruel, Inhuman or Degrading Treatment or Initiatives taken by the United Nations.

The United Nations has played a key role in prevention of custodial violence including torture, and to secure custodial justice, The United Nations since its formation has been providing standards & practices by introducing various international instruments such as Universal Declaration of Human Rights(UDHR 1948), International Covenant on Civil, and Political Rights(ICCPR 1966), the UN Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment, and Punishment(CAT 1984), the United Nations Basic Principles for Justice for Victims of Crimes, and Abuse of Power (UNBPVC 1985), the United Nations Optional Protocol of Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment, and Punishment(OPCAT 2006), and International Convention for the Protection of All persons from enforced Disappearances(ICPED 2007), the United Nations Standard Minimum Rules for Treatment of Offenders, 1955 etc. These conventions aside, the established Principles of Medical Ethics in terms of dealing with prisoners which are relevant to the role of health personnel especially physicians, are also relevant to combat custodial torture in police custody.

United Nations Bodies, and Mechanism

The United Nations (UN) has established various Committees/ bodies Special Rapporteur etc to monitor of human rights standards at domestic level, Among them the followings are worth mentioning:

- UN High Commissioner for Human Rights
- UN Committee against Torture
- UN Sub-Committee on Prevention of Torture
- UN Special Rapporteur on Torture
- UN Voluntary Fund for Victims of Torture
- UN International Day for Victims of Torture on 26th June

UN Human Rights Committee

The Human Right Committee was established pursuant to Article 28 of the International Covenant on Civil, and Political Right to monitor implementation of the Covenant in the State parties, The Committee is composed of 18 independent experts who are expected to be persons of high moral character, and of recognized competence of human rights, India became a party to the International Covenant on Civil, and Political Right (ICCPR) on April 10, 1979, The Human Rights Committee, in 1997, in its scrutiny of India's country report expressed its concerns that:

“Allegations that police, and other security forces don't always respect the rule of law, and that they in particular don't follow the court orders for *habeas corpus* is not always complied, especially in disturbed areas. It will also expresses concerns about incidence of custodial deaths, rape, and torture (UN, 1997),

UN Special Rapporteur on Torture

Since its establishment in 1985, the UN Special Rapporteur on Torture's authority to monitor extends to all Member State of the United Nations, and to all State by way of observer status, regardless of the State's ratification of the Convention against Torture, The Special Rapporteur establishes contact by way of Governments, asks them for information on legislative, and administrative measures taken to prevent torture, requests them to remedy any consequences, and asks them to respond to information alleging the actual occurrence of torture, As mentioned earlier India is a signatory country of the Convention against torture therefore, it has not issued an invitation to the Special Rapporteur on Torture

despite several requests to this effect (Redress, 2005, ACHR, 2008). Nevertheless, the Special Rapporteur on Torture has commented on India, assessing the situation on the basis of information that he has received over the years, as follows:

While the diversity and size of our country makes it extremely difficult to put a characteristic on the intensity of several problems faced all over, we certainly appears to have an established tradition of police brutality. The brutality is sometimes linked to corruption, prevalent extortion practices. These practices are many a times deployed in the services of local groups who have vested interest in the outcomes. However, the usage of excessive and unprovoked violence is certainly unjustified and uncalled for. In addition to this, another atrocious phenomenon is the prosecution of people who raise their voice and complaint against such practices. In areas characterized by armed resistance, the security forces seem notably prone to resort to extreme, and often lethal violence even if individual abuses not carried out as part of organized military operations may be sanctioned, In general, the level of impunity prevalent amongst the police force and also the security forces appears to be sufficiently substantial so as to generate a sense excessive use of force by these officials. And the fact that such acts will not be tolerated.

International Humanitarian Law

The international treaties governing armed conflicts establish international humanitarian law, The prohibition of torture under humanitarian law or the law of war is only a small, but important, part of the wider protection these treaties provide for all victims of war, The four Geneva Conventions of 1949 have been ratified by 188 States including India,

They establish rules for the conduct of international armed conflict, and especially, for the treatment of persons who do not, or who no longer, take part in hostilities, including the wounded, the captured, and civilians.

Conventions, expand the protection, and scope of these conventions, Protocol-I ratified by 153 countries covers international conflicts, Protocol-II (ratified by 145 States) covers non-international conflicts, More important to the purpose here, however, is what is known as “Common Article 3”, found in all four conventions, Common Article 3 states:

“the following acts are, and shall remain prohibited at any time, and in any place whatsoever ...,violence to life, and person, in particular murder of all kinds, mutilation, cruel treatment, and torture...outrages upon personal dignity, in particular humiliating, and degrading treatment,” It is noteworthy to mention that India had ratified Geneva Convention on November 9, 1950.

The International Criminal Court (ICC)

The International Criminal Court came into force with the adoption of the Rome Statute in 17 July 1998, established a permanent international criminal court to try individuals responsible for genocide, crime against humanity, and war crimes, The Court has jurisdiction over cases alleging torture either as part of the crime of genocide or as a crime against humanity, if the case is such that torture is committed being a part of a systematic and widespread attack or as a war crime under the Geneva Conventions of 1949, Torture is defined in the Rome Statute as the infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, As of 25 September 2000, the Rome Statute of the International Criminal Court had been signed by 113 countries, and ratified by 21 states, The court will have its headquarters in the Hague, This court has jurisdiction only in cases in which States are unable or unwilling to prosecute individuals responsible for the crimes described in the Rome statute, The Rome Statute declares torture as crime against humanity, However, when the Statute of an International Criminal Court was voted on in Rome in July 1998, India was abstained, India’s objections to the Statute are manifold, The Indian State’s major concern revolves around the role of Security Council, and the inherent jurisdiction the court, In regard to both these issues, concerns about India’s sovereignty played a major role, Later the concerns about preserving the primacy of national juridical process were also expressed, The inclusion of ‘armed conflict not of an international character’ in defining war crimes constituted another of

India's concern, The other important objections raised

by India were actually not against what was in the agreement but what was left out, The non inclusion of first use nuclear weapons, and Terrorism externally aided, and abetted cross boarder terrorism in the list of crimes were the other sore points for India, However, ICC is a judicial mechanism for violations of human rights including Torture, As Noorani points out, despite being a strong democracy, India has a very dismal record in the matters of accountability for human rights violations, and impunity (Noorani 2002; Uma 2003; Praneeth 2006).

Coalition of International Non-Governmental Organizations against Torture

In line by way of International instruments a number of Non-Government Organizations working for the prevention of torture, and rehabilitation of victims of torture, These organizations working under umbrella of the Coalition of International Non-Governmental Organizations against Torture (CINAT) include International Federation of Action by Christians for the Abolition of Torture, Association for the Prevention of Torture, Amnesty International, International Commission of Jurists, World Organization Against Torture, International Rehabilitation Council for Torture Victims, and Redress Trust, Many Other Health, and Human Rights Professional Organizations such as International Committee of the Red Cross, International Council of Nurses, World Confederation of Physical Therapy, World Medical Association, World Psychiatric Association, International Society for Health, and Human Rights, and Human Rights Watch etc have undertaken various activities, and efforts as monitoring, advocacy, fact finding, documenting, and research activities striving for prevention of torture, and rehabilitating the victims of torture too(CINAT, 2001),

Prevention of Torture through Monitoring

Since its inception the association of prevention of torture in 1977, has been promoted monitoring of places of detention as an effective means for preventing torture, ill treatment, and other human rights abuses in custodial institutions, The Association for the Prevention of Torture (APT) works through three integrated elements such as effective legal framework, transparency of detentions institution though regular visits by

experts, and capacity building to reform practices of detentions institutions, The Association of Prevention Of Torture (APT) campaigns for Accession to the UN Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment, and Punishment, 1984, and its optional protocol to the Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment, and Punishment, 2002, On 18 December 2006, four years after the adoption of the OPCAT by the UN General Assembly, the then 29 states parties to the Protocol elected the first members of the UN Sub committees on Prevention of Torture, The OPCAT establishes that the UN Subcommittee will be complemented at the local level by National Preventive Mechanism (NPMs) that will also undertake regular visits to places of detention, The UN subcommittee, and the NPMs aim to build a constructive dialogue by way of the authorities, and provide recommendations on effective measures to be taken in order to further prevent torture, and ill-treatment, Finally the UN Subcommittee cooperates, for the prevention of torture in general, by way of the relevant UN organs, and mechanisms as well as by way of the international, regional, and national institutions or organizations working towards the strengthening of the protection of all persons against torture, and ill-treatment, Hence, on the basis of the OPCAT, the three main features that characterizes the UN subcommittee are following:

- A visiting body;
 - An assisting, and advisory body for both State Parties, and National Preventive Mechanisms;
 - A body that integrates by way of existing mechanisms,

APT is closely working by way of subcommittee, and substantially contributed in prevention of torture though visiting places of detention, and prepared following benchmarks for effective tool for visiting system in custodial institutions including police custody ;

- The Impact of External Visiting of Police Stations on Prevention of Torture (1999);
- visits under Public International Law, Theory, and Practice (2000),

- Roles for physicians, and other health professionals (2008),
(APT 2009)

Prevention of Torture through Documentation

Effective investigation, and documentation of alleged torture can generate reliable evidence that torture has taken place, and it is instrumental in bringing perpetrators to justice, and in ensuring torture survivor's access to justice, and right to reparations, In this context, International Rehabilitation of Victims of Torture (IRCT) has been working for implementation of the Istanbul Protocol, The *Istanbul Protocol* has been adopted by United Nations, which provides the first set of internationally recognized as prevention though documentation as well as guidelines for medial, and legal experts on how to determine whether a person has been tortured, and establish independent valid evidence that can be used in court cases against alleged tortures, Since its inception in 1999 the Istanbul Protocol has become a crucial instrument in the global effort to end impunity for perpetrators, , Through the project" Prevention though documentation" launched in 2003, the IRCT is working to promote states' endorsement, and implementation of the Istanbul Protocol, The project targets Ecuador, Egypt, Georga, Kenya, Maxico, Morocco, Philippines, Serbia, Sri Lanka, and Uganda, The project is led by IRCT in partnership by way of the World Medical Association, the Human Rights Foundation of Turkey, Redress Trust, Physicians for Human Rights, and a wide range of local partners, The project is financed primarily by the European Commission by way of additional resources by the Foreign Commonwealth office, the Canadian Embassy in Cairo, and the Government of Spain (IRCT, 2008),

Prevention of Torture through Rehabilitation

The global human rights movement against torture has grown remakerably over the past few years, The United Nations has created UN Voluntary fund for victims of Torture in the year of 1981, The fund is supporting various individuals, and organisations to help the victims to torture in rehabilitate them in the main stream of society, This fund sponsors about 200 NGO projects assisting about 80,000 victims of torture, and members of their families in about 80 countries worldwide (UN, 2004),In this context, some of the voluntary

organizations like OMCT, and IRCT utilized the UNVFVT (UN Voluntary fund for victims of Torture) to provide psychological, medical, social, economic, legal, and other forms of humanitarian assistance to victims of torture, and members of their families,

The Organization of Medical Centre of Torture (OMCT) since 1986, has been responding to the immediately, and effectively to the urgent needs of torture victims worldwide including India, The urgent assistance for victims programme intervenes by offering victims under framework of UN Convention against Torture, and its Article-14 says “ Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress, and has an enforceable right to fair, and adequate compensation, including the means for as full rehabilitation as possible, In the event of death of the victim as a result of an act of torture, his dependents shall be entitled to compensation”,

OMCT offers legal assistance to torture victims who have fled their country, and are requesting political asylum in a third country; to victims who require independent foreign lawyers; to those who are fighting against impunity of tortures; to those who request compensation from the relevant national or international authorities;, and to victims who wish to use the mechanisms of certain United Nations committees in order to condone their country for the non-respect of international human right norms, OMCT also provides social assistance to victims who are threatened by acts of torture, and who must expatriate themselves, often leaving their families behind them by way of no income, and in harms way, OMCT allocates temporary urgent financial assistance to these victims, and their relatives so that they may overcome these fist obstacles;, and OMCT also actively collaborates by way of member organizations, and rehabilitation centers in developing countries on the medical treatment of victims so that they can helped ideally, in their own country or in a neighboring one(OMCT 2009),

The International Rehabilitation Council for Victims of Torture comprises of 142 centers, programmes in 72 counties around the globe including India, The centers, and programmes carried out by thousands of doctors, lawyers, social workers, and volunteers in diverse cultural, and political contests, enjoying a variety of treatment methods, and approaches,

Their aim is to support torture survivor's right to rehabilitation by offering medical, legal, and psychosocial assistance to individuals, families, and communities((IRCT,2006-Centers, and Programmes in the global IRCT network : An Overview-Copenhagen, IRCT), International Rehabilitation Council for Victims of Torture (IRCT) works closely by way of health professional organizations, including the World Medical Association (WMA), the World Confederation of Physical(WCP), the World Psychiatric Association(WPA), the World International Council for Nurses(ICN), and Phrygians for Human Rights(PHR), The IRCT accredited centers, and programmes throughout the world use varying approaches to provide rehabilitation services for torture survivors, The approaches are rooted in the knowledge that torture may have different consequences, and effects as results of diverse social, political, and cultural context,

Recent Development

In the aegis of the global movement against, International Rehabilitation Council for Victims of Torture (IRCT) has organized a series of the International Symposium on Torture, One of the most significant events took place in recent years, the **VIII IRCT International Symposium on Torture** held in New Delhi, India from September 22-25, 1999, organized by the International Rehabilitation Council of Torture Victims (IRCT), Copenhagen, Denmark based International rehabilitation organization in collaboration by way of the Indian National Human Rights Commission (NHRC), Indian Medical Association (IMA), and Indian Law Institute (ILI), on “ *Torture as a Challenge to the Health, Legal, and other Profession* ”, Besides many significant recommendations the symposium laid main thrust on prevention of torture,

Prevention has two main mechanisms: we need *positively to transform attitudes, and* beliefs about human rights , through informing, and educating at every level., and through creating societies that are democratic just., and equitable;, and we need *credible deterrent*, by setting up the right legislation, and enforcing accountability through national, and international courts, These were reported on, and debated at every level:

At the level of national, and international law

- At the level of *political pressure* to change laws, and to ensure compliance by way of human rights instruments; a further deterrent politically is the adaptation of the Statue of Role on the International Criminal Court, the constitution of International Tribunals in the former Yugoslavia, and Rwanda,, and the increasing capability of treaty bodies, and other UN processes,
- Through *National Human Rights Institutions, and NGOs*, which for the first time were well represented at this Symposium, and are well –positioned to provide a powerful advocacy force; the possibility of collaborative partnerships between Human Rights institutions, and bodies such as the IRCT is likely to accelerate progress in the prevention of torture, This has effectively opened up a new front in collaborative work in this field,
- At the level of *professional education*, at the basic training stage, and in-service *training* , *inter-alia* for health professional, legal professionals, the judiciary, police,, and prison services, One of the most constructive areas of endeavor, from a preventive standpoint, an important step forward in the fight against torture was taken by way of the development of the Istanbul Protocol –a tool intended to be universally applicable for legal, and medical investigation, and documentation of torture (prevention through documentation), which has drawn on expertise from around the world, The use of Istanbul Protocol was formally endorsed by the Symposium delegates,, and this will contribute towards the widespread implementation of highly professional procedures where torture is alleged, Besides, there has been the increasing emphasis on human rights training of police, and security forces in several countries,
- At the crucial area of *social awareness* of human rights issues in the general public most importantly through the *media*, which in an age of communication play a tremendously powerful role in helping to shape public understanding, and opinion The immensely destructive role that the media can play was raised in debate in relation to the use of the radio in fanning genocidal hatred in Rwanda; it was seen as crucial for the media to play an informed, and socially responsible role in this area,
- At the *deterrent level*, it is clear that substantial headway is being made against *impunity*, A series of Truth, and Reconciliation Commissions have begun to force

an open disclosure of crimes, National leaders are increasingly being held accountable for human rights violations,, and certain them have been indicated, Most importantly, we have seen the beginnings of prosecutions of torturers in three different cases the Yugoslav, and Rwanda International Crime Tribunal gave a decision the crime of torture,, and found several accused guilty, including politician, a military police commander, a camp commander,, and camp guards, The importance of this was that torture was found to violate customary international criminal law,, and the elements of torture were established, similar to those set out in the Torture Convention, The Trial Chamber found that sexual violence, and severe physical or mental harm were acts of torture, This is enormously important, and influential jurisprudence in the fight against Torture,

- At quite a different level of restitution, and deterrence, increasing attention is being given to redress to survivors, No government seems to have put in place a wholly satisfactory solution to this problem, but there have been interesting developments, In India, for example, following decision of the Supreme Court, and the National Human Rights Commission, the State has begun to pay reparation to torture survivors,, and on occasion to exact this payment in whole or in part of it form the perpetrator or torturer, This gives new meaning to accountability,, and approaches a more equitable restorative justice,

The symposium deliberated various issues, and concerns pertaining to the Torture, and its ramifications in India, and International Perspectives, The scientific symposium was concluded by way of adoption of the Delhi Declaration on Freedom from Torture- a Programme of Action (Annual Report of NHRC 1999-2000);

The Symposium urges the following actions to be taken by the United Nations (UN) :

Expending consideration of an Optional Protocol to the Convention against Torture allowing international access to all places of detention under the jurisdiction of State Parties to the Protocol,

- Expending consideration of the Proposed UN Principles for restitution,

Compensation, and Rehabilitation of Victims of Grave Human Rights violations, and Fundamental Freedoms,

- Expanding consideration of minimum standards for forensic examination of alleged victims of torture, and the effective global dissemination of the guidelines contained in the Istanbul Protocol,
- Ensuring diligent prosecution of alleged tortures, and effective protection, and redress to victims of torture, and their families within the framework of the procedure being developed for the International Criminal Court,
- Providing technical assistance to the production, and effective global dissemination of relevant teaching material on torture issues for health, legal, law enforcement, and other concerned personnel,
- Providing technical assistance for recurrent international, and national information campaign by way of a view to creating, and maintaining public awareness of the continued practice of torture, and of the need to provide effective reparation to torture survivors, and their families,
- Strengthening the capacity, and resource base of the UN mechanisms supporting the fight against torture,

The Symposium further urges the following actions the national level;

- Sensitization of the Political leadership to issue concerning torture,
- Accession to the UN Convention against Torture where this has not taken place,
- Accession to the International Criminal Court,
- Expediting revision of national laws to deal comprehensively by way of the prosecution of torturers, and reparation to victims of torture,
- Significance increase in the number, and size of state contributions to the UNVFVT (United Nations Voluntary Fund for Victims of Torture) as well as identification of, and systematic canvassing of potential supplementary donors to the UNVFVT,
- The systematic, and effective monitoring by national human rights institutions of instances of torture, particularly of custodial violence,
- Promote a culture of non-violence, and the respect for human rights,

- Repealing of laws providing impunity to torturers,
- Special consideration to protecting women, and children against torture;
- Greater Involvement of all components of civil society including health, legal, and other professions as well as NGOs, and media in the fight against torture,

Recently, **IX IRCT International Symposium on Torture** was held on “*Providing Reparation, Treatment, and Preventing Impunity*” in Berlin (Germany) on December 9-10, 2006, Nearly, 400 health, legal, and other professionals from 88 countries attended the two days event, The symposium addressed important challenges faced by the global movement against torture in foremost the health, and legal arenas, From a health perspective the participants explored the relationship between medical, pharmacological, and classical psychological treatments, and considered the ways to enhance standards of update evidence based medical treatment for torture survivors, suffering from anxiety disorders, depression or post-traumatic disorders, The symposium also focused on the need to find better ways to deal by way of secondary trauma, and burnout, and to provide care for caregivers, From a legal perspective, best practices examples, and law were discussed by way of regard to addressing impunity at the national, and international levels by way of focus on obtaining reparations for victims of torture, The Symposium has deliberated, debated, and discussed various issues, and concerns, and called upon that the synergy between the medical, psychological, social, and legal sciences for the continued advancement of prevention of torture, and rehabilitation of victims of torture (Torture 2007).

**CHAPTER V:
'JUDICIAL APPROACH'**

“Men do not go to prison for punishment but as a punishment”

...Sir Alexander Paterson

“Whether the law is right or wrong, I

know only the prison wall is strong,

Where the days are like years,,

and years whose days are long,”

””

Oscar Wilde

“If you once forfeit the confidence of our fellow citizens you can never regain their respect, and esteem, It is true that you can fool all the people some of the time,, and some of the people all the time, but cannot fool all the people all the time,”...Abraham Lincoln

The earlier stand of Indian judiciary on the application of the general norms of international law, and India's treaty obligations was that unless specifically incorporated by local statute, treaties do not create rights in municipal or domestic law, The Supreme Court of India has however, substantially altered the law in this regard, It is a settled principle now that if the norms of international law are not contrary to Indian law then are legally enforceable,, and the treaty obligations which are rights-enhancing are taken as part of the life, liberty, and due process provision of the Constitution, The Supreme Court of India has time, and again read the provisions of the UDHR, and ICCPR into the fundamental rights chapter of the Indian Constitution,1 Atrocities, and torture by governmental agencies especially police in India has always been a subject matter of curiosity, controversy, and debate, Considering Article 21 of the Constitution, all forms of torture, cruelty, inhuman and degrading treatment is prohibited. The Supreme Court of India in awarding compensation has relied on Article 9(5) of ICCPR even though India entered a clear reservation towards it claiming that in the legal system of Indian , the right to compensation for victims of unlawful arrest and detention is not allowed. The courts have leaned in favour of international conventions in interpreting the scope of life, liberty, and due process clause of the Indian Constitution under Article 21 in a long line of its judicial precedents.On the basis of the doctrine laid down by various Supreme Court judgments, torture has been explicitly recognized in our consti

tutional jurisprudence.⁵²

Torture is not permissible whether it occurs during investigation, interrogation or otherwise, The wrong-doer is accountable, and the State is completely responsible if the person who is in police custody is deprived of his life except in accordance by way of the procedure established by law. However, when the matter comes up in the court, the balance between fundamental rights of an individual on one hand and duties of police on the other hand has to be maintained. It cannot be said that the freedom of a particular individual shall yield to the security of State. For this, the Latin maxim *salus populi est suprema lex* comes to use i.e. the safety of the people is the supreme law. Another maxim i.e. *salus reipublicae suprema lex* is also relevant here meaning State's safety is the supreme law. However, it is a time tested concept that the welfare of an individual must always yield to the welfare of the community. The right to life has correctly been given the supreme status. It is the basic right which includes both: the so-called negative and positive obligations of the State. The negative obligation refers to the overall prohibition on deprivation of life made arbitrarily. Here, positive obligation would want that the State has overriding obligations in order to protect its right to life within its territorial jurisdiction.

These obligations requires the State machinery to take all possible measures to protect life, and investigate all the suspicious deaths. The State must always protect the victims of torture and ill-treatment. The human rights defenders fighting for the interests of the victims, giving the issue serious consideration for the reason that victims of torture suffer enormous consequences especially psychologically, The problems with acute, post-traumatic stress disorder, and many other psychological consequences should be understood in a correct perspective. Therefore, the State must definitely ensure that torture and other forms of cruel, degrading, and inhuman treatments are prohibited.

In addition to the protection provided under the Constitution, the Protection of Human Rights Act, 1993, also provide for protection of all rights to all the individuals. The law prohibits illegal detention, widespread Torture, and custodial deaths. In its 113th report, the Law Commission of India recommended that the Indian Evidence Act, 1872 be amended so that if there is evidence of

⁵² ADM v, Shivakant Shukla, (1976)2 SCC 521; Francis Coralie Mullin v, Administrator, UT of Delhi, (1981)1 SCC 608; Charan Lal Sahu v, Union of India, (1990)1 SCC 613; Jolly George Varghese v, Bank of Cochin, (1980)2 SCC 360; Sheela Barse v, Secretary, Children's Aid Society, (1987)3 SCC 50; Kubic Darusz v, Union of India, (1990)1 SCC 568; Nilabati Behra v, State of Orissa, (1993)2 SCC 746

custodial injuries, the court gets a chance to presume that such injuries were caused by the actions of police during the custody. Burden to prove the contrary is on the police authorities. The law requires that we adopt a realistic approach instead of the narrow technical approach for custodial crimes.

There is another aspect to the protection of rights of an accused i.e. chemical-induced truth testing of a suspect is deeply problematic, and has been touted a measure that will reduce the temptation for investigators to resort to torture, Aside from the fact that the efficacy of these methods is open to serious doubt, the very thought of attributing a pre-determined truth value to a confession of guilt even before the trial begins, a truth value that will operate as a presumption for the court to follow, can only be viewed as incompatible by way of due process, There is no thought, and discussion of subjecting the witnesses especially the prosecution witnesses, and the police witnesses to any such chemical induced truth testing tests, There is a strong temptation to pressurize a suspect to agree to undergo such a test, Therefore, the suggestion that such a test, whatever be its scientific basis would be an antidote to torture can never be taken seriously, That apart, such a practice frontally offends the rule against self-incrimination, It is little better than police assertions of 'voluntary confessions', A disturbing pattern is noticed as to the disjuncture between normative human rights principles laid down in public law, and the actual course of criminal prosecutions of officials accused of custodial crimes, The Supreme Court of India has conclusively held that Narco analysis, Polygraph test, and Brain Electrical Activation Profile violate the right against self incrimination.⁵³

A glance through the various historic decisions of Courts shows that Indian judiciary has made a gigantic achievement to protect custodial human rights. Also to facilitate effective reliefs to the victims of such violations, many steps have been taken. Remedial measures are given in the Constitution of India.⁵⁴ This can be done through multiple writs issued by the Supreme Court and the High Courts against the violations of rights available to a person in custody. Similarly, the High Court also has the inherent power to quash subsequent proceedings at the initial stage of filling the FIR also. Under Article 51 of the Constitution an obligation exists to foster respect towards the International Law. The Indian judiciary

⁵³ *Selvi, and others v, State of Karnataka*, (2010)7 SCC 263

⁵⁴ Article 32, 226, Constitution of India.

upholds this sanctity towards human rights while also acknowledging that the reliance on international covenants should be placed since it ensures the dignity for basic human rights in India.⁵⁵

The operations of police is subjected to judicial review in India and thus its control where the police is called upon to carry the judicial requirements in the areas where the police is left with its discretion to carry out its own policies within the larger legislative or judicial framework. It is a slight relief that the criminal justice system which comprises of the police by itself very frequently breaks the custodial rights available to an accused person but the judiciary on the other hand aims to consistently protect, and promote the practice of upholding human rights. This human rights-oriented pattern followed by the Indian judiciary is often highly criticized by the police administration especially those who are inclined to commit the torture. They tend to shift the blame on the Apex Court where some judges are hardcore liberals. The court releases judgements which raises eyebrows over the actions of police. This tends to make our system of criminal justice double sided. One that hurts, and the other i.e. the Courts that try to heal.⁵⁶ The Indian judiciary especially, the Supreme Court has evolved, over a period of time, many precious rights to the arrested person by way of successive judgments and flowing human rights jurisprudence. The citizens, majorly the intelligentsia, usually stand for protection of human rights and knock the doors of judiciary very frequently to seek relief. And they thereby demand the redressal towards the violations of such rights. These rights are discussed as below.

⁵⁵ See *Visakha v, State of Rajasthan* [(1997) 6 S.C.C. 241], and *Apparel Export Promotion Council v, A,K, Chopra* [(1999) 1 SCC 759]

⁵⁶ S,P, Srivastava, "Human Rights, and the Administration of Criminal Justice in India", *Human Rights, and Victimology*, V,V Devasia, and Leelamma Devasia (Ed.), p, 5,

Right against Arbitrary Arrest, and Detention

Article 22 of the Constitution was a safeguard given by the legislature towards the law relating to deprivation of life, liberty which is protected by Article 21.⁵⁷ But this position underwent a sea change when the judgment of *Maneka Gandhi v, Union of India* came out.⁵⁸ Now Article 21 has become an ever lasting source of restraint upon the various bodies of the government. Consequently, this has led to a change in the relationship between Articles 21 and 22, Earlier 'the procedure established by law' to deprive a person's life and liberty provided under Article 21 had taken its minimum content from Article 22. But tables have turned and now the basis on which Article 22 is established is Article 21.⁵⁹ This is true with respect to the laws on preventive detention which have to conform to the requirements of Article 21 and 22. Thus, the Constitution has given the vital right to approach the Supreme Court and observed that the Indian Constitution is an extremely unique document. It's not merely a pedantic legal text but it also embodies certain human rights values and its cherished principles and norms. The Constitution accepts that an individual is the focal point of all the development. Individual's moral, spiritual development etc are the chief concern of the various provisions of the Constitution. It does't treat individual as just a cog in the mighty all-powerful state machinery. But it places the individual right at the centre of the entire constitutional scheme. It focuses on the all-round complete development of an individual's personality. All these provisions enacted with the purpose to ensure that the human dignity is maintained and also to provide for moral, material, and spiritual development of individuals. It would be entirely meaningless, and ineffectual, if there is no rule of law to do this by way of a guarantee of life and force.⁶⁰

*In Joginder Kumar v, State*⁶¹ the Court stated that the essential doctrine of liberty guaranteed by the Constitution of India will effect everything expect the fact that arrest cannot be made merely because police has the power to do it. That the power to arrest exist is one thing, the arbitrary exercise of such power is quite another. Arrest should not be made without

⁵⁷ *AK Gopalan v, State of Madras*, A,I,R, 1950 SC 27

⁵⁸ AIR 1978 SC 597; see also *Kartar Singh v, State of Punjab*, (1994) 3 SCC 569.

⁵⁹ See Manohar, Sujata V,, "Judiciary and Human Rights", *JJ/L*, vol, 36 (1996), 39-54

⁶⁰ AIR 1982 SC 1325

⁶¹ AIR 1994 SCW 1886

reaching a reasonable satisfaction after investigation about genuineness and the bonafides of the complaint and analysing whether the need for arrest exist. A person cannot be arrested merely on the suspicion of complicity. Except in case of heinous offences, any type of arrest shall be absolutely avoided.⁶²

Right to be Informed of the Ground on which Arrested

In *Ajaib Singh v, State of Punjab*,⁶³ the Court analysed the arrest angle of Article 22(1), and (2) in terms of the arrest made under given section 50(1), and (2) of the Code of Criminal Procedure. They concluded that Article 22(1), and (2) were applicable to those cases of arrest which were made without any warrant. Thus, it was entirely unnecessary to apply these articles on arrest made with warrant. Article 22(1) of the Constitution is supposed to be applied if the arrest is made without a warrant. This is because such application will ensure the immediate application of judicial mind on the question of the legal authority of persons who are making the arrest, and whether the regularity of such procedure which is undertaken by him were even correct.

The reason for this given by the Supreme Court in the case of *Ajaib Singh* were reiterated in the cases of *Raj Bahadu*, and in *Erimmal Ebrahim Hajee*. In *Hajee*, the Court held that the arrest was made for recovery of the arrears of high amount of income tax due under section 48 of Madras Revenue Recovery Act, 1864. It was not the arrest which will fall within the meaning of Article 22 (1), or 22(2) of the Constitution. Such an arrest was clearly not meant for any of the offences or punishments. Instead it was a mode of recovery of the amount due. At the same time, Article 22 (1) and (2) were designed to grant protection against the acts of the executive and other such authorities. In *State of U.P. v, Abdul Samad* Justice Subba Rao stated that arrest and detention of foreigners so as to deport them will fall within the scope of Article 22(1). In order to bring transparency and accountability to the process of arrest, the Supreme Court of India devised a very useful and effective mechanism to structure the machinery for contemporary recording of statements, and the notification of arrest. The court held that in addition to the given requirements, an effective machinery to

⁶² *Id*, at p 1349, 1353

⁶³ 1953 CrLJ 180.

obtain contemporaneous recording of all the matters of arrest and detention is the need of the hour to maintain transparency and accountability in the system. It is highly desirable that the officer who is arresting a person should maintain a memorandum of arrest at the time of his arrest. This should be done in the presence of at least one witness. This witness can be a family member or even a respectable person from such a locality where the arrest is made. The date and time of the arrest shall be recorded in a memorandum which must be countersigned by arrested person.⁶⁴

Right to Counsel

In re Llewelyn Evans, the Bombay High Court held that an accused person should not only be at the liberty to be defended but also he should be given a reasonable opportunity to communicate the matter to his lawyer". This view was also reiterated by Lahore High Court in *Sunder Singh v, Emperor*. In another case of *Amolak Ram*, the Supreme Court held that where the arrest is based on mere suspicion, the arrested person will be entitled to an access to his lawyer in custody. Therefore, the right to consult and be defended by a legal practitioner of his choice contains two rights- (1) the right to consult while being in custody, and second (2) the right to have defense at the time of trial.

In *Moti Bai v State*, the victims were arrested, and detained by the police in custody. On this, the Rajasthan High Court observed an infringement of the constitutional rights guaranteed under Article 22(1). Their rights as conferred by section 340 (1) of the Code of Criminal Procedure, 1973, was also observed to be violated. The Court found that since his arrest, the accused person had a right of consultation to a legal advisor of his choice, and also to be defended by him. It was also observed that the Evidence Act, 1872 under section 126 provides that all types of communications are supposed to be treated like a privilege between the client, and his counsel. So, as is evident, the communication between the client and his counsel will be confidential where the police officials fall within the range of such consultations. In addition to this, such a consultation should also not be only between the accused and his lawyer but they must also be given to his family and relatives. However, the choice of consulting and option to be represented lies with the accused, The

⁶⁴ *D,K,Basu v, State of West Bengal*, A,I,R, 1997 S.C. 610

right is not at all absolute in terms of its practice. For eg. Article 32 and Article 22 do not guarantee any absolute right to consulted by a lawyer.

The given guaranteed right only provides for an 'opportunity' to engage a basic competent lawyer of his choice. It has been held that this right to counsel is not limited to the persons who were arrested but it can also be availed by any other person who happens to be in the danger of kind of losing his personal liberty. Similarly, in the case of *State of Punjab v, Surinder Singh also*, the court held that no hard and universal application is necessary on the issue of questioning or interrogation made by police. The court here was also of the opinion that if such a situation arises, the police will be at the disposal of the lawyers who tend to adopt dilaying tactics by taking multiple adjournments. They may also not permit certain forms of questioning at all.

Right against Capricious, and Unnecessary Handcuffing

In the case of *Sunil Batra v Delhi Administration* , the Supreme Court held that the usual resort to handcuffing the accused shows a barbarous and hostile attitude against our goal of attaining human dignity and social justice.

In *Prem Shankar Sukla v, Delhi Administration*, the Supreme Court rebuke the attitude of handcuffing by saying that the handcuffs should not be used as a routine. They should be used only when the person under arrest is rowdy, aggressive, or if he is involved in non-bailable offence. This high handedness of the police authorities in India was also brought to light in the case of *Delhi Judicial Service Asson, Tis Hazari Court v, State of Gujarat*. This case displayed a berserk behaviour pattern of the police which undermined human dignity and ultimately also the independence of judiciary. The Court took a very serious note of this whole incident and ultimately laid down a few detailed guidelines to be followed in the case of arrest. These guidelines were to apply only on judicial officer. Otherwise, in the shaming method of handcuffing and public parading of prisoner, the State will be directed to pay adequate compensation by various liability since policemen employed by it are its employees. This was held in the case of *State of Maharashtra v, Ravikant S Patil*, Despite multiple eye opening judgments, the police officers resorted to the methods of hand cuffing even now. Some of these cases are *Altemesh Rein v, Union of India Harbans Singh v, State*

of UP, Sunil Gupta v, State Madhya Pradesh, etc.

Right against Torture, and subsequent Custodial Death

The Supreme Court is of the view that torture or other forms of degrading treatment in any form is highly offensive to entire human dignity. It is also violative of Article 21 of Indian Constitution. In *Kishor Singh v State of Rajasthan*, very severe guidelines were given by the Court against the police system and machinery. This was against the gruesome act of torture committed by the authorities. It also denounced the third degree methods of torture used by the police. Justice Krishna Iyer in the judgment observed that there is nothing that is more unconscionable and cowardly than a helpless person in police custody beaten up. This inflicts a very deep wound on our constitutional values and culture. The Supreme Court of India and various High Courts have repeatedly condemned such custodial violence and multiple dignitaries have spoken strongly against its prevalence in India. It has been proposed that stringent punishment is needed for custodial violence. In *Gauri Shankar Sharma v, State of u,p*, a typical case of brotherhood within the police force arises where the police officer rescues his colleague by giving false evidence favourable to the policeman accused of custodial violence. Realizing this, the Court restored the conviction and sentenced the trial court for 7 years, The Court also rejected the plea for substituting the imprisonment by fine only.

The offence of custodial violence which is itself of a serious nature is aggravated due to the fact that its committed by the very people who have the duty to protect the citizens. The Police is not supposed to misuse its uniform and the authorities is not supposed to brutally assault the people in custody. Death of a person in police custody must always be viewed seriously otherwise the country will move in the direction of a strict police raj instead of democracy and rule of law. This type of violence must be curbed at any cost. The punishment should always be such that would help in deterring others from indulging in this kind of behaviour.

There can be never be any room-for leniency in this. In January 1985, the Supreme Court noted that the eye-witness's testimony in cases of torture leading to death was very rarely

available. The other police officers appear to be more concerned about concealing the occurrence of custodial violence than in acknowledging its existence. The Court also stated that it wished to push the on the government the need for amending the law in order to reduce the burden of proof in the cases of custodial death and shift it to the perpetrator.

Custodial Rights of Women

In *Nandini Satpathy v, P,L, Dani*, Supreme court has held that right to not make statements which are self- incriminatory is interpreted very widely. It covers the pre-trial stage where investigation takes place. The Court also criticed the reglar practice of calling women to police stations for the purpose of investigation. It stated that such acts led to a violation of Section 160(1) of the Cr,P,C, These sections require police to conduct interview of males under the age of 15, and women mostly in the place where they reside i.e. their residence. In the case of *Sheela Barse v, State of Maharashtra*, the Court made multiple suggestions to avoid the repeated occurrence of situations of torture by police. These directions though seemingly sensible, have not yet been implemented by majority of the officials, policemen and the Magistrates. It's not a surprise that the cases like *State of U,P, v, Ram Sagar Yadav*, still continue to happen. When the attention of this Court was drawn to the horrible conditions of custodial institutions for women, the Court immediately issued a detailed procedural directive to ensure that the enforcement of human rights pertaining to women, and girls in custody are adhered to. The High Court also issued guideline to the respective State Government so that they improve the system of justice of persons in custody.

Even though it is necessary to protect all the female who have been arrested by the police officers from misdeeds of the police. It may not always be essential as well as practical to have such presence of one lady constable when the essential requirement for arrest arises. Therefore, the direction issued by the Court requires certain modification without having disturbed the primary object behind the same.

This judgement also invited protests from multiple corners of the society. It created an apprehension for many human rights activists that there are no substantive laws that deal with the arrest of women. This decision may also be misused by the police to arrest multiple women without having a lady and a day constable in the team. A few directions which have been given by the Human Rights Commission, and also the subsequent changes in it are only the leading principles in this regard.

Right to Compensation

Paragraph 5 of Article 9 of the International Covenant on Civil, and Political Rights 1966 states that persons who have been the victim of unqualified arrest shall have a right to compensation. This question of allowing different types of monetary compensation to people was also somewhat considered by the Supreme Court in *Khatri v State of Bihar*. Here, Justice PN Bhagawati had explicitly observed the following- Why should the court be ill prepared to forge new methods and tools. To devise new remedies and solutions for vindicating the very precious fundamental right to life provided under Article 21 of the Constitution. In *Rajasthan Kisan Sangathan v State*, the Supreme Court held that it is now a very well settled proposition that even during lawful detention, the person arrested is entitled to a treatment full of dignity that any human being would be entitled to. The mere fact that he was being detained lawfully does not mean that he will be subjected to some form of ill-treatment, leave aside the act of torturous beatings. The essential right to be treated with full dignity even during the lawful detention is a very well recognized right under Article 21 of the Constitution. If it is discovered that the police maltreated any arrested person in custody, and such ill-treatment was outside the basic interrogation methods allowed by the law, then he will be entitled to a monetary compensation at least for the such torturous act committed by the police.

In the case of *Challa Ramkonda Reddy v, State*, it was held by the Court that if a citizen has been somehow deprived of his life or liberty, which is otherwise than in accordance with the correct procedure established by law, then the state will be bound to pay compensation. The state is discharging a sovereign function. The Court also didn't fail to

point out that this maybe the only mode through which the right to life which is guaranteed under Article 21 is enforced. From the brief perusal of the above cases, it is adequately clear that there is no clear to understand the basis for the judiciary's approach towards giving a quantity to the amount of exemplary costs. The discretion for awarding monetary compensation for violating the established principles of Article 21 is supposed to be left on every individual judge.

A mere working principle to award compensation which evolved through *Peoples Union for Democratic Rights v, State of Bihar* led to one observation wherein the Supreme Court held that we may not be taking suggestions in case of custodial death, the liability of the wrongdoer is absolutely absolved especially when the compensation of minimum of rupees twenty thousand is already paid. As a principle and also as a convenience, a viewpoint towards re-habilitating the dependents of the deceased person through such compensation was agreed upon. Without any prejudice to the just claim, the argument which is advance by the relatives of the victims, in every event of death, a minimum compensation of Rs 20,000 should be awarded. And for every injured person, a compensation of Rs 5000 must be paid. The Supreme Court in the case of *Nilabati Behra v, State of Orissa* created a distinction between the remedy of compensation which is available under the Constitution of India and the one available under the private i.e. the Law of Torts etc. The Court also observed that the award of compensation in any proceeding under the Article 32 by the court or High Court under given Article 226 of Constitution which is a remedy which is available in the public law, and is based on the concept of strict liability for contravening the fundamental rights guaranteed under the Constitution over which the basic principles of sovereign immunity will apply even though it might not be available under the private law against an action based on tort.

In the case of *Saheli v, Commissioner of Police*, the compensation under Torts law was allowed by the Supreme Court. Similarly, in *State of Rajasthan v Vidyawati*, a reference

regarding the State immunity was rejected by the Court and State liability was fixed upon it. But in *Kasthuri Lal v State of UP*, the Court held that sovereign immunity will be applicable.⁶⁵ In *Nilabati Behra v State of Orissa*, the Court directed the State to pay a compensation of Rs, 1,50,000- to the mother of the deceased person. While doing so, the Court relied upon the Article 9(5) of ICCPR. The Court further observed that some of these provisions indicate that deeply enforceable rights to adequate compensation is not very very alien to the guaranteed rights. Thus, the basic doctrine of 'sovereign immunity' which is an absolute principle has now been modified by the Supreme Court. The present judicial activism involved in this certainly meets the needs of a changing society which is rendered justice and such acts were awe inspiring.

In another decision, involving fake encounters in some disturbed area of Manipur, two alleged terrorist persons were arrested by police, and were taken to a distant place. Later they were shot at causing their death. The Supreme Court held such administrative lases cannot be permitted. The interference by the Supreme Court is uncalled for. The Court awarded a compensation of upto Rs 1 lakh to the families of those deceased individuals. Applying the above mentioned principle, the compensation was awarded to the families of the persons who disappeared or were found dead after they were taken into interrogation by the police. In addition to this, the compensation has also been awarded to the persons who had suffered because of patently illegal detentions, acts of rape, illicit torture, and forced labour in the detention. Thus, in a series of cases, the Apex Court has again and again, held that it is the state which shall be responsible for all kinds of unlawful acts conducted by its officers. It is the state that must repair the damages which are done to its citizens by the officers who violate their fundamental rights of liberty breaching the authority of law.

The latest judicial trend is in consistency with this is being in consonance with Article 9(5) of the ICCPR. Even though the detailed understanding of the personal liability of erred police officer is a completely new feature in the Indian judiciary, it would have been way better if in the case of *Pratul Kumar Sinha and Aravinder Sinha Bagga*, the Supreme Court

⁶⁵ *Sebastian M, Hongray v, India*, (1984) 1 S,C,C, 339, and (1984) 3 S,C,C, 82, *Ni/abati Behera v, Orissa*, (1993) 2 S,C,C, 746; *Pastsangbam Ningol Thokehom v, General Officer Commanding*

had not at all left it completely open to the State government for recovering the money from the persons guilty. And instead of that they should have directed them to recover the money. The above mentioned decision shows that the main object of awarding such compensation was to rehabilitate the worst victims or their dependents. Many a time times due to police atrocities the victim may not die but it might happen that they lose a limb or eyes or the particular incident would make him unable to earn a source of livelihood. In such a cases the amount of compensation suggested by the court will not be sufficient to rehabilitate such a victim.

However there are certain allegations pertaining to the Supreme Court being the sentinel of human rights, yet it has not been able to successfully bring out changes to the actions of the police. It is certainly true that threat of liability has create a humungous effect upon public policy. The side of the plaintiff has not been able to successfully sustain a lawsuit because of the severe expense involved. Experience has also proven that most of these complaints are against the police and coming not from the areas around the ghetto which have scope of abuse of power by the police authorities, rather from the middle income area where there is a prevalence of articulate citizen who become annoyed over police officer's actions.⁶⁶

For an indigent person, who are the illiterate victims of severe human right abuses, the writ courts are very remote remedy and probably also too expensive to be availed. Such rights are now granted by these courts which were earlier of illusory nature in absence of proper implementation, and enforcement. To this, Justice Krishna Iyer has written in anger-

“Rights even though solemnly proclaimed, and shown to be entrenched in great instruments are but essentially a printed futility. This is unless the judiciary annex by way of legal authority some remedial process, jurisdictions, whether operational or pragmatic, and transform the jurisprudence of human rights into the public law of feasible and enforceable justice.” Human right regimes in India leave a very wide gap between the normative suggestions and capabilities to implement. The outcome is that the large-scale breach of rights becomes a common scenario. The superior police officials, even though in private may be critical of actions of lower officials, have a tendency to safeguard and protect their

⁶⁶ 101 (1994) Supp,(s) SCC 100

fellows or government from prevailing civil liability. Even public prosecutors are likely to instruct police administration towards the suspension of disciplinary proceedings against the department that will prejudice litigation. Overcoming all these types of difficulties even in the face of an unusual decision an individual succeeds towards gaining a money based judgement in an action against the police department. It is apparent that such an action does not cause a re-evaluation of the department's policy or practice. Thus, the civil litigation does not at all appear to be the perfect method of stimulating correct law enforcement policy.

CHAPTER-VI
CONCLUSION and SUGGESTIONS

CONCLUSION and SUGGESTIONS

The previous chapters analyse the origin and development of policing in India through discussions of atrocities in police custody. Using third degree torture, rampant corruption, political interference in criminal investigations, insufficient salaries and dire living conditions of overworked personnel, pressure from superior officers and the general public for speedy detection causing mental strain to the investigation officers, defective system of recruitment and training, callous investigation system, and lack of public co-operation are some of the factors observed in the study towards the problem of custodial violence in police custody.

Despite the contributions of judiciary, non-governmental organisations, media and other authorities towards ensuring justice, the incidents of custodial violence are endemic in the state. However, the solution is not enactment of strict laws alone. Yes, it is difficult to find a remedy without altering social and legal realities which have emerged through centuries. Efforts instead towards bringing changes in the behavioural pattern of the police may be a temporary remedy. Vigorous campaigning from different angles platforms is necessary to eradicate the threat of human rights violations.

Alongside the human rights violations in police custody, reforms must also address the structural problems which have facilitated torture and ill-treatment. Incorporation of international human rights standards or a basic code of ethics, particularly those relating to arrest and detention procedures, safeguards against discrimination are the need of the hour. Strict supervision over police personnel authorised to arrest, and detain people, frequent visit to police stations by impartial superior officers having a regard for human rights are some ways.

India's current criminal investigation system allows arrest, then investigation and finally the collection of evidence. This leads to officers forcing confessions via torture. Developed countries like England follow a system where arrest and interrogation are the final step post knowledge of the whereabouts of the suspects, and collection of evidence by lawful means.

Sufficient time and training are imparted on the investigating officer for the collection of evidence.

Ensure adequate safeguards for arrest. Police must demonstrate in writing the need for arresting an individual to avoid unwanted arrested for vested interests. Limit the powers of the police to arrest, solely per law, in uniform clearly indicating their names, distinctive ranks, and the names of police stations to which they belong. Vehicles used by the police should have number plates clearly displayed at all times.

Studies prove that the use of handcuffs causes humiliation, and loss of self-respect to the arrested person. Barbarous tying of humans in iron chains while taking through public places should be used only in cases where persons to be arrested are obstructive, disorderly or violent. This too must be done post getting the required order from judicial officers in advance. If not practical to get such an order in advance, the reason and the circumstances should be recorded in writing, and the necessary order of ratification should be obtained from the concerned judicial officer.

Maintenance of a comprehensive record containing the details of arrest should be kept at the station. Whenever arrested, the place, exact time of the arrest, by whom it was made, where the arrested person is being kept, to whom they have been handed over, details of witnesses, and other relevant information should be entered in the diary. Further, intimate such details to the District Police Head Quarters, and to the concerned Custodial Justice Officer. All police stations should keep accurate and up-to-date record. There should be periodic checking of police stations by superior officers or by a visiting body, and action must be taken against those officials who have not followed the procedures.

All police stations must have reception-cum-waiting rooms with adequate seating facilities, register for recording arrest. Arrested persons must be brought into the station only after entry in the register. The reasons for arrest, their rights and privileges, must be clearly and promptly stated to the detainee, in a language they understand to enable them to effectively present their case. Additionally, display in the lock-up a list of those rights and privileges. They should also be informed of the disciplinary requirements in police stations.

As already in law, no woman must be arrested between sunset, and sun rise unless it is absolutely necessary. In such cases, the permission of the next superior officer must be obtained. If no permission, justification for arrest should be reported to the next superior officer without delay. The arresting party must consist of sufficient women constables, and the arrested woman should be kept under their custody. Relatives or neighbours of the arrested woman should be allowed to accompany her to the station. Introduce a redressal mechanism consisting of a three-tier system: Grievance Cell in every police circle, Complaint Board in all districts, and a State Security Commission at the state level. Further add a civilian control mechanism in the form of Custodial Justice Committee at the cutting-edge level consisting of reputed human rights activists, and social workers preferably from the locality, media men, nominees from the bar, and nominees from the police department. The Committee should elect a Custodial Justice Officer for welfare of persons in custody. Custodial Justice Officer must mandatorily be informed about the matter of arrest and details such as ground of arrest, time of arrest, persons who have been intimidated, health condition of the person, et al. Bring in a signed statement from the Custodial Justice Officer and the relatives that they have been intimidated the details of the arrest.

Constitute District Level Human Right Cells in all district headquarters similar to the State Human Rights Commission. Members of the District Human Rights Cells, and the Custodial Justice Committee, and Custodial Justice Officer must be empowered with immediate, unhindered access without prior notice or permission to all places where people may be suspected to be detained by the police; to take appropriate actions against possibly delinquent officials.

Release person from police custody only in presence of their relative or friend or advocate or a respectable person of the locality or a member of the Custodial Justice Committee. Maintain proper records consisting the whereabouts of the detainee, and their arrest. Detach the existing in-house mechanism functioning of the office of D.G.P. in order to ensure its independent, effective, and successful functioning. Convert into a civilian controlled mechanism. Measures to see that police is not exerting pressure or harassing and victimizing the parents, relatives or friends of the “wanted” under the mask of

investigation. When the police decide to arrest a person, refuse bail, refuse to grant permission to consult a legal practitioner or withhold any legal provision from a suspect in extra ordinary circumstances, it must not be without reason, and the police officer effecting the arrest should bring it to the notice of the Custodial Justice Committee instantly.

When in custody, persons should be kept in officially recognized places of detention and the names of all those detention centres should be notified. Secret or ad hoc detention centres must be barred. A person in police custody must receive free legal aid if unable to appoint counsel at cost of the state. The consultation may be within the sight of the police officer but not within their hearing.

All persons in police custody should receive food of reasonable standard and quality, clean water, or if they wish, have food at their expense. It is the primary right of every person to have decent wearing apparel, thus persons in lock-up should be allowed to wear their own clothing, and under no circumstances should be compelled to remain in underclothing or humiliating outfits. Decent dresses in the form of Bermuda or long trousers at the State's expense should be kept in the stations in reasonably hygienic conditions. Relatives, and counsels should have free access to the lock-up to meet the detained. All detainees should be examined by a doctor promptly after admission, and have the right to be medically examined by a doctor of own choice. Copy of the medical examination report of the arrested person should be given to them or their nominated representatives. A Reception Centre consisting of a physician and a psychiatrist should be constituted in all sub-divisions, to be headed by a senior police officer.

In the event of custodial death, post-mortem must be conducted within 24 hours. Medical professionals must receive proper training and orientation based on ethical standards. The deceased's relatives should be permitted to post an expert medical practitioner at the time of post-mortem. All post-mortem examinations in respect of deaths in police custody should be filmed, and sent to NHRC and SHRC. Take measures to protect medics carrying out post-mortem, and medical examinations of alleged torture victims from police pressure. It should be made obligatory that the police officials not be present during post-mortems or the medical examination.

Impart extensive training in investigations through recent scientific innovations to create specialised wings for investigations. In the existing system of policing, personnel receive only 30% time for investigation. Shortage of time leads to short-cut method of torture. Thus, it is extremely crucial that investigative work be de-linked from law, order functions, and other duties to enable them time for investigative duty. Investigating police officers must be barred from VIP arrangements like duties.

Section 22 of the Indian Police Act, 1861, and relevant sections of the State Police Acts lay down that, police can be considered to be constantly on duty, and may at any time be moved to any part of that general police district, dehumanising the police system. It is high time to limit the working hours of officers to 8 hours similar to other professions. They must receive overtime allowance for extra hours of duty. Studies note that a policeman has to work at least 16-20 hours a day, 7 days a week, without any weekly off, for 3 or 4 weeks! The present situation turns out to be worse than in 1979 when the NPC found that policemen had to work for 16 hours per day. Incessant work without leisure and recreation leads to mental and physical rupture, resulting in highly insensitive to rights of citizens. No religious or national holidays further make a total of 26 per cent extra days of work per year. Measures to increase the man power in police department, representation of women in every police station must be done.

There exists an impression among members of investigative agencies that criminal trials must lead to conviction. Therefore, they exercise unfair and devious methods to ensure that the accused is, in fact, convicted. This notion of the police, the justice system, and the general public suggests that conviction rates are not accurate and cannot be used as a measure for promotion in service, unless scientific and justified methods are used to collect evidence and prove an accused guilty. Imparting better training to officers and making them proficient investigators in serious crimes is necessary.

State must ensure that all proofs are collected by police through proper scientific methods, for example making electronic recordings of suspects' interview by equipping interrogation rooms with tape recording system, close circuit television facility, lie detectors, lie

detectors, and other scientific gadgets. Set up precise parameters for interrogation of suspects after consultation with police officials, human rights activists, judges, advocates, sociologists, psychologists, and members of medical profession. Regular revision and publication of these parameters from time to time is crucial. Humane techniques of interrogation, and humane methods of psychological tackling must be developed. Interrogation of an accused must only take place the attendance of an impartial third party. International standards of juvenile justice must be applied when dealing with the children coming in conflict with law.

Study the five Ps of their psyche while attempting to understand the criminal, i.e., presenting problem, predisposing, precipitating, perpetuating, and protective factors. It is for this reason the “Police Psyche Centre” should be established by the District Police; wherein restorative measures should be announced. The Centre should provide for different treatment for differing personalities post a psychological analysis to ensure no human rights are violated. Apply scientific techniques of recruitment to obtain candidates with professional aptitude, above-average intelligence, political neutrality, sound character, and emotional constancy. Considering the rising educational and financial standards of the society, qualifications of the law enforcements must be raised to collegiate levels. Further, their pay scale must be revised. Persons with criminal nexus and background, if selected, must be thoroughly verified for restorative improvements.

Whilst the British era, the constabularies were focused on physical training and parade-oriented. This continues to date without bare modifications. Rather than 'muscle policing' we need forces with mental capabilities and sensitivities, to look at the criminals and accused with a humane eye and not as villainous characters from a soap opera.

Training curriculum at police academies require revision. Introduction of a courses on Humanity and Human Ethics wherein noted sociologists, civil rights activists, psychologists, eminent police officers who understand and encourage human rights must be employed as faculty to inculcate modern interrogation techniques and respect for other individuals in them. During the training and the service period, organise workshops on topics like “Reject Third Degree” in regular intermissions. The partakers must be provided

a chance to openly express their beliefs and feelings to psychologically rid them of wrong notions buried deep. Counselling would play a major factor in removing the need to fight violence with violence. To ensure no one feels targeted, the courses and workshops must include a diverse variety of participants. Post training, resources must be allotted for its practical application, which must be closely monitored, evaluated, and personnel should be provided critical feedback.

Police personnel must be trained to look past their personal prejudices while protecting the citizens. Caste, class, gender, sexuality, are some good examples of criterion on the basis of which accused and victims are pre-judged for their behaviour. The training must imbibe a natural respect for human rights going up to national and international standards. Whether for security purposes or custodial interrogation, the officers must be regularly reminded of their duty towards their state and citizens via workshops with NGOs, counsellors, previous victims and experts from varying backgrounds who have exhaustive knowledge on custodial violence and how it affects their victims. A good way to ensure the training is in fact put in use would be to highlight the work of officers who follow human rights protocols. Promoting them would be a great motivation and ensure higher effectiveness.

Equip police academies' libraries with sufficient books and reading materials on subjects of scientific and modern methods of investigation, human rights, penology, behavioural science, criminal psychology etc. Statistics of juvenile offenders are on a constant rise and the Special Juvenile Police Unit (instituted as per section 10 of the Juvenile Justice (Care, and Protection) Act, 2000) require special training to comprehend and handle both actual and potential delinquents, and to develop schemes to assist them in becoming peaceful and respectable citizens instead of recidivist elements of society. The Government should comply with U.N.'s Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Convention on Prevention of Torture states the state need to simply prevent the act of torture, whereas it must do much more. The convention must be amended to include 'prevention of attempt, complicity, preparation, and abetment to committing an act of torture as also punishable'. All of these modifications must also be imbibed in our Constitution.

Statutes like the Indian Police Act, 1861, and the Kerala Police Act, 1951 require restructuring wherein higher regard is given to human rights of persons in police custody. Such statutes should be updated regularly, to work with the existing times. Legislations which provide for direct and indirect relations between law enforcements and public must be periodically reviewed to safeguard civil rights. The first Optional Protocol to the International Covenant on Civil, and Political Rights should be ratified by the Government of India, The Government of India should take steps to take away the reservations it made while acceding to the Covenant so as to enable the Indian citizens to claim compensation in case of wrongful arrest or detention.

India should further ratify the Optional Protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women and enable bringing complaints to the Committee on the Elimination of Discrimination against Women with respect to violation of their rights, post exhausting their national remedies. Special Rapporteur on Torture and the Special Rapporteur on Violence against Women must be invited to India for investigating patterns of custodial violence on women. Steps for prompt investigation of all reports of torture published by non-governmental agencies via an independent and impartial body.

As set out by the Supreme Court, particularly in *D.K. Basu v. State of West Bengal*, safeguards for detainees on arrest must be incorporated in relevant statutes, police manuals, etc. Measures and statistics to monitor their implementation must be put out regularly. Emphasis must be placed on ethical methods followed during investigation instead of success or failure of the case. Most of the human rights activists believe the Code of Criminal Procedure confers excess powers on the police officers. If an officer, out of spite, registers a blatantly false case and arrests an innocent law-abiding citizen, it becomes extremely difficult for the arrestee to come out unscathed.

The Indian police are fanatical about maintaining secrecy. Harmless documents pertaining to the police are labelled as confidential. Police code and standing orders must allow for freely available documents, and be accessible at police stations upon request. To guarantee transparency in police work, the criteria for maintaining confidentiality and restrictions

imposed on the circulation should be redefined. Appoint a commission to enquire into present working conditions, domestic requirements of police personnel, and standard of living. Provide better salaries and welfare facilities to officers to curb corruption. Provide policemen of, and under, the rank of sub-inspectors with respectable accommodation or rent allowance. Whether personnel of the stature of DIG or a constable, all must be appointed at particular location for a tenure, lest they turn corrupt.

Instead of the existing law which puts only a passive duty on police personnel to abstain from torture, it should designate a positive duty to prevent, and bring before law, torture committed by their colleagues. To follow unlawful instructions of superior officers need not be obeyed. Instead, laws must provide for a system wherein subordinates may file complaints against superior officers making them liable for such actions. Mandatory judicial inquiries into allegations of torture, rape, and death in custody must be accommodated. In the event a victim alleges custodial torture or illegal detention in a *habeus corpus* petition, the judiciary must conduct independent inquiries. If an official does not cooperate, criminal prosecution should be initiated. Rid the system of receiving prior sanction from government for conducting investigations against officers who have committed death or torture in police custody. Allow for appointment special prosecutors in custodial violence cases. Provide interim relief to victims of custodial violence from their perpetrators. To establish liability of the police in such cases from the beginning, there must be presumption of guilt.

Instead of courts issuing reminders to Parliament or directions to Executive, the attempt must be to establish the real intent of their decisions. Playing an active role in monitoring and adherence to guidelines set out by *D.K. Basu v. State of West Bengal* is one way. Provide the judiciary with all plausible resources to apply themselves completely to their role in assessing the legality of the condition of detention. Magistrates should question detainees brought before them to ascertain that they have not been tortured, ill-treated or made involuntary confessions, and are not being held in conditions amounting to ill-treatment. In order to ensure a safe environment in which detainees are able to bring complaints of torture before a Magistrate, there should be an opportunity for detainees to be heard by the Magistrate in the absence of those police officials who have brought them

from the police station, and may have been responsible for their arrest, interrogation, and detention, In doing so, they must ensure that detainees are not withholding relevant information from them for fear of reprisals by law enforcement officials, and make it clear to detainees that in the event that a complaint is made, steps will be taken to protect them against reprisals. Judges should pursue any evidence or allegations of torture, and order release if the detention of an individual is found to be unlawful, A system of a 'Mobile Judicial Unit' (MJU) should be introduced in all the Taluks, and Districts. It should be made mandatory that every arrest is to be reported by the police to an officer of the Unit through wireless messages within a prescribed time limit.

Protection of Human Rights Act is to be amended to empower the NHRC to Award appropriate compensation in the cases of violation of human rights by police instead of merely recommending to the concerned authority or Government, Section 357 of the Code of Criminal Procedure empowers the trial court to award compensation only if the offender is found guilty by the court, This section is to be amended so as to empower the trial court to award interim compensation in case of human right violations by the police, Verification mechanisms should be arranged to ensure that orders for compensation are implemented promptly by the authorities, and that they are paid directly to the awardee, A new law of bail is to be enacted similar to the Bail Reforms Act, 1966 in U,S,A in which it should be stipulated that release should be granted in non- capital cases where there IS reasonable assurance of the accused's reappearance when required.

The contact of the police by way of the public should be friendly enough to create a mutual respect, If the police respect the public as a whole, the public will respect them.

The essential to have an endeavour on the part of the police to eliminate the mutual hostility, and distrust existing between the police, and the public, and to develop cooperation, and more openness in dealing by way of the public, especially by way of mass-media,

Since the cardinal principle behind the concept of human rights is the recognition of the rights of everyone to live by way of dignity, and let others also live by way of such a dignity, this must become the philosophy of life for everyone, The police should also follow the same philosophy since they also form a part of the society, Circumstances make a man a

criminal, and he is not losing his dignity by the mere reason that he is destined to become a criminal, Police should not resort to torture, violence,, and deaths in police custody, We need; the police to be human, tolerant, and dignified, The dignity of police is not something to be buried within the four walls of the police station, The police should bear in mind the fact that they are also human beings, and that either the notoriety or reputation they have earned in their service does not end by way of their retirement or death, Hence it is necessary for the police to reorient its style of functioning for playing a more effective role in controlling crime, and winning the support, and confidence of the people, Radical reform of the police set-up is the need of the time, According to the modern democratic concept, police should always be a friend, guide, and philosopher to all the citizens including the criminals in the society.

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