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Supervisor Name Shaifali Dixit **UID :** 19912 **Designation :** Assistant Professor
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| SR.NO. | NAME OF STUDENT | REGISTRATION NO | BATCH | SECTION | CONTACT NUMBER |
|--------|-----------------|-----------------|-------|---------|----------------|
| 1 | Anju Rani | 11507699 | 2015 | L1506 | 9041198779 |

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| DAA Nominee Name: Sumit Goyal | UID: 14120 | Recommended (Y/N): NA |

Final Topic Approved by PAC: "Custodial Torture and Human Rights: A Study of the Indian Penal Justice System"

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PAC CHAIRPERSON Name: 20889::Dr.Shailesh N Hadli

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CUSTODIAL TORTURE AND HUMAN RIGHTS: A STUDY OF INDIAN PENAL JUSTICE SYSTEM

Dissertation submitted to the Lovely Professional University

In partial fulfillment of the academic requirement

For the award of the degree of

Master of Laws (LL.M)

Submitted by

Anju Rani

(Reg No: 11507699)

Under the Supervision and Guidance of

Ms. Shaifali Dixit

Assistant Professor

School of Law



LOVELY PROFESSIONAL UNIVERSITY

PHAGWARA – 144411, INDIA

May 201

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I hereby certify that this dissertation entitled “**Custodial Torture and Human Rights: A Study of Indian Penal Justice System**” submitted for the award of Degree of Master of Law (LL.M) is a record of research work done by the candidate “Anju Rani ” during the period of his/her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship, Fellowship or other similar titles to the candidate. I further certify that this dissertation represents the independent work of the candidate.

Place:
Date:

Ms. Shaifali Dixit
Assistant Professor
Supervisor & Guide

Place:
Date:

Dr. Shailesh N. Hadli
Dean and Professor
School of Law
Lovely Professional University

Declaration

I hereby declare that the dissertation entitled “**Custodial Torture And Human Rights:A Study of Indian Penal Justice System**” submitted to the School of Law, Lovely Professional University for the award of degree of Masters of Law (LL.M) is a record of original and independent research work done by me under the supervision and guidance of Ms. Shaifali Dixit, Assistant Professor, School of law, Lovely Professional University and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associateship or other similar titles.

Place:

Date:

Name of Student

Anju Rani

Reg.No. 11507699

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List of Abbreviations

| S.no. | Abbreviations | Stand For |
|--------------|----------------------|--|
| 1. | AIR | All India Reporter |
| 2. | CAT | Convention against Torture and Other Cruel, inhuman or Degrading Treatment and Punishment |
| 3. | CCTV | Closed Circuit Television |
| 3. | CEDAW | Convention on the Elimination of All Forms of Discrimination against women |
| 4. | CRC | Convention on the Right of the Child |
| 5. | CPAED | The International Convention on the protection of the Rights of All persons against Enforced Disappearance |
| 6. | Cr.PC. | Criminal Procedure Code |
| 7. | Cri L J | Criminal Law |
| 8. | DJP | Director General of Police |
| 9. | Dy.S.P | Deputy Superintendent of Police |
| 10. | NCRB | National Crime Record Bureau |
| 11. | NHRC | National Human Right Commission |
| 12. | NPM | National Preventive Mechanism |
| 13. | NGO | Non-Governmental Organization |
| 14. | IPC | Indian Penal Code |
| 15. | SCR | Supreme Court Reporter |
| 16. | SC | Supreme Court |
| 17. | SCC(CR) | Supreme Court Cases |
| 18. | SCR | Supreme Court Journal |
| 19. | SHO | Station House Officer |
| 20. | SP | Superintendent of Police |
| 21. | UDHR | Universal Declaration of Human Rights |

- 22. ICCPR International Covenant on Civil and Political Rights
- 23. ICESCR International Covenant on Economic, Social and Cultural Right
- 24. ICERD International Convention on the Elimination of All forms of Racial
Discrimination

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1. A.K. Roy v. Union of India, AIR1982 SC 1325
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53. Roshni Devi and others v Joint Sectary of Govt. of T. N.,1984(15) ELT 289

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57. Satish Chandra Rai v Jodu Nandam, (1899) 26 Cal 74
58. Serajudin Ansari v the home secretary, 1999(2) BLJ 256 at 256(Pat.)
59. Sheela Barse v state of Maharashtra, AIR 1983 SC 378.
60. Shiv Bahadur Singh v state of Madhya Pradesh (1954) Cr.L.J. 92
61. Shivappa v State of Karnatka AIR 1995 SC 980, 1995 SCC (2) 76
62. Sunil Batra (1) v Delhi Administration, AIR 1978 SC 1575
63. Sunjay Suri v Delhi Administration AIR 1988 SC 414

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64. U.P. V Ram Sagar Yadav, Criminal appeal no. 69 of 1975, AIR 1985

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65. Vineet Narayan v Union of India, (1998) 1 SCC 226

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| S.no. | List of Statue |
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| 1. | Constitution of India, 1950. |
| 2. | Criminal Procedure Code, 1973. |
| 3. | Chartered Act of 1813. |
| 4. | Government of India Act, 1833 |
| 5. | Indian Evidence Act, 1872. |
| 6. | Indian Penal Code, 1861. |
| 7. | The National Human Right Commission Act, 1993. |
| 8. | The Police Act, 1981. |
| 9. | Juvenile Justice (Care and Protection of Children) Act, 2002. |
| 10. | Special Act (Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. |

Chapter 1

Introduction

India has attained its freedom many years back but it is still striving hard to get free from the shackles of many deep-rooted evils. India is a democratic country. Democracy protects life and liberty of the person, where everyone has freedom. Torture by a police official in the custody is the assassination of the democracy of India. *Mahatma Gandhi* was the foremost leader who followed the principle of non- violence in attaining freedom of India and it is a biggest irony that now the country is struggling hard to get rid of a crime like ‘Custodial Violence’. The state is under a duty to protect the society from aggression. Torture by those who uphold the law and order leave a person with no option.

Judiciary, Prosecution, and Police must work in consonance with each other to detect and punish the criminal and set free the society from the crime and look after the objectives of the criminal administration law, that is; To maintain peace and order in the society, criminal law punish the wrongdoer, it avoids the incidence of crime, punishes the transgressors and the criminals, restore them, compensate the victims as far as possible, maintain law and order in the society, to deter the offenders from committing any criminal act in the future. But the situation has changed now, those who bear a responsibility they themselves have become the criminal by committing atrocities on the arrested people in their custody.

Custody is a place where person is detained. It restricts the freedom of movement but is a protective place where a person is kept when he is involved in any case, either he is committed it or he was just a part of the crime. Torture is very common phenomena and it is prevalent in many countries across the world. Torturing on suspect in custody is inhuman, barbic and illegal. Custodial torture is the naked violation of human rights, and destroys the individual personality¹. It is an assault on human dignity.² There are two types of the custodies given under section 167 of the criminal procedure code, police custody and judicial custody. Suspect can be kept in police custody in two cases, Firstly,

¹Justice Palok Basu, *Law Relating to Protection of Human Rights Under The Indian Constitution and Allied Laws*, (Former Judge, High Court Of Judicature at Allahabad), 743(1st 2002)

² Ibid at 744.

when a person is arrested by the police, he is kept in the police custody and must be produce within 24 hours to magistrate, Secondly, if investigation cannot be completed within 24 hours, the maximum period of detention can be 15 days, but it cannot exceed until it is not ordered by the Magistrate.

While a person is in custody, He is an accused³ of the crime, not criminal of the offence, after his arrest, he will be produced to trial court on respective dates, if after trial, the court has found his guilt, he will be punished⁴ for the same offence and will be sent to the jail after the judgment given by the court. Until and unless, a person is not held guilty by the court, he must not be mall-treated like a guilty person in the police custody.

1.1 Problem Profile

In the ancient time, the accused and the criminal were treated with same attitude, later the rule of ‘presumption of innocence until proven guilty’ emerged, under which, no person who is a suspect of an offence, or has charged for the offence, will not be presumed to be guilty of the same offence, until and unless he/ she is not proved guilty beyond reasonable doubt in the court of law. The constitution of India endeavors to protect each and every individual, even if a person is in jail or in police custody his rights are equally protected by the constitution like any other individual It has given importance to the person who is accused; as our constitution is protecting the life and liberty of the person either he is in jail. Because life is not merely an animal existence, it must be life with dignity, wherever you are. Human rights of the person protect him even if he is a free man or detained accused. Detention cannot reject the basic rights of the person.

Arrested person kept in police custody, where he is interrogated related to the crime and in so many cases he becomes the subject of torture, assault, sexual exploitation, and deaths which is totally prohibited by the law. Torture is so brutal and unkind practice which disrespects the human dignity. It is the clear violations of the human rights. There are number of provisions under the Constitutional other as well as under other penal Laws to safeguard the interest of the suspect/accused but there is no practical

³ S.2, Indian Evidence Act, 1872: Expressed that, accused is person accused of any offence, have the same connotation and describe, the person against whom evidence is sought to be held in criminal proceeding.

⁴ S.54, Indian Penal Code 1860: Punishments.

implementation of these provisions. There are varieties of reasons likewise for; police want to extract the information from the accused, psychology of the police officer and the pressure from the higher authorities, corruption and etc.

Human rights were recognized at international level, Universal Declaration of Human Rights (UDHR) sets the rule for whole world to protect the human rights. Article 5 of the universal declaration of human rights (1948) and convention on civil and political rights (1966) “No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment”. Article 11 states that everyone who is charged with the criminal charges will be considered innocent until he is not proved guilty under the law.

On 9 August, 1999, Istanbul Protocol on human right has discussed the steps that should be taken while dealing with the complaints of torture done by state, or any investigating agency. It sets the guidelines for the psychological, physical or legal investigation of the ill-treatment set by the Turkish Medical Association.⁵

Universal Declaration of Human Rights(UDHR),⁶ International Covenant on Civil and Political Rights (ICCPR),⁷ International Covenant on Economic, Social and Cultural Right(ICESCR),⁸ International Convention on the Elimination of All forms of Racial Discrimination(ICERD)⁹, Convention on the Elimination of All Forms of Discrimination against Women(CEDAW),¹⁰ Convention on the Right of the Child(CRC)¹¹, Convention against Torture and Other Cruel, inhuman or Degrading Treatment and Punishment(CAT),¹² and the International Convention on the protection of the Rights of All persons against Enforced Disappearance (CPAED)¹³. This apart, the UN Declaration on Basic Principles of Justice for Victims of Crime and abuse of Power

⁵ *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, available at, <file:///C:/Users/HP/Desktop/my%20work/z/instanbul%20conference.pdf>, last seen on 17/2/17.

⁶ Adopted on 1948.

⁷ Ratified on 1st November,1961.

⁸ Ratified on 10th April,1979.

⁹ Ratified on 3rd December, 1968.

¹⁰ Singed on 30th July,1981.

¹¹ Acceaded on 11th December,1992.

¹² Singed on 8th October,1997.

¹³ Singed on 6th Febuary,2007.

is relevant¹⁴After the registration of the first information report which is a very first stage, the police will reach on the occurrence, will record the statements of the witnesses and will arrest those which police officer has reason to believe that they should be arrested. Arrest is taken away the liberty of the person, it is very important that it should be reasonable, fair and just. Thus, the right to liberty is of fundamental importance to the status and the dignity of the pre-trial detainees.

In 2012, special reporter of united nation visited to India, he welcomed all the provisions that India has adopted to protect the human rights of the under-trials and convicted. He appreciates the guidelines given by Supreme Court under *DK Basu v State of West Bengal*¹⁵, guidelines given by human rights commission to inquire the case in of death in custody. He also observed that, there is no practicality of these provisions, these are mere documents. Police brutality can be seen in many cases.

With the passage of time, much provision has been added in the different statue to protect the rights of the accused, and also to keep check on the police. Police is responsible to maintain law and order in the society, and prevent the crime. Police has given wider powers under the law, but the misuse of such powers is the matter of concern. Complaints of misuse the powers and torture on the suspect is the concern of the society. Legislature has passed many laws under constitution and other statues which prohibit the torture in the custody. Many recommendations have been given by the law commissions, committees regarding the torture by police and the human rights of those who got such torture. In *Kishore Singh v State of Rajasthan*¹⁶ Supreme Court held that custodial torture is the horrible act and it is threat to justice. Arrested person is never a subject of beaten up and third degree torture in the custody. It is important to ensure the accountability of the police.

It is very important to strike a balance between the power used by the police and the human rights of those on whom they used such powers. It is so fateful that the protectors of the human rights have become the violator of human rights. There is continuing hatred

¹⁴ Adopted in 1985.

¹⁵ *D.K Basu v. State of west Bengal* ,AIR 1963 SC 1295.

¹⁶ *Kishore Singh v.State of Rajasthan*, AIR 1981 SC 625 at p.628.

for the state and central government by the activist of human rights and civil liberty organization that they fail to safeguard the human rights of the citizen.

1.2 Research Objectives:

1. To enquire the role of police in the process of investigation and disregard of the human rights by them.
2. To enquire reasons behind Custodial Torture and its prevalence in India.
3. To examine the efficacy of law and judiciary to prevent the victims from custodial torture.
4. To determine Constitutional and statutory provision against custodial torture and methods to regulate it.
5. To understand the role of Human rights seating at the back seat in this depressing scenario of custodial torture.
6. To analyze the preventive measures and human right perspective to curb custodial torture.
7. To suggest ways and means of developing and restoring the confidence of the common man in the Police and Criminal Justice System by protecting the innocent and the victim and by punishing unsparingly the criminal.

1.3 Research Hypothesis

The present study is based on the hypothesis that-

1. Custodial Torture is the foremost impediment in the practical implementation of human rights of an accused.
2. The arbitrary abuse of police power is the main cause behind the custodial torture in police custody.

1.4 Research Methodology

The present research is non-doctrinal research. Researcher has mainly used library to get statues, text, judgments, legal journals, magazines etc. The research is based on the research material collected through already prevailing literature as well as existing data in various

sources and thereby critically analyzed, thoroughly revised and incorporated in this study. The data collection restricts only to the secondary sources.

1.5 Review of literature

No such study can be planned without referring to good books and articles. The foremost step for starting the study on a topic is to thoughtfully analyze the prevailing literature on the subject. The review of existing literature provides clarity of thoughts and deep understanding of the subject. It gave an idea about those people areas which are still untouched or need to be analyzed in more detail regarding dowry prohibition. Following sources have been reviewed thoroughly to understand the concept.

Books and commentaries

Dr. S.K. Awasthi and R.P.Kataria in their book, “Law relating to the Protection of Human Rights” deal with a different aspect of human rights of the person who tortured in police lock-up, and award compensation to the victim for redressal. In this study, the researcher will discuss the rights of under trials who are in the police custody, brutality of the police, and compensation in case of custodial death.

Prof. S.K. Misra, in his book of “Law of Criminal Procedure in India” has discussed the powers and duties of the police as described under Criminal Procedure Code, 1973. The researchers will discuss the powers and functions of the police and also the new development in the criminal law as recommended by various Law Commissions reports and other committees from time to time. It will also discuss the new amendments in the criminal law related to protection of accused from the torture of police in the custody.

Justice Palok Basu (Former Judge, High Court of Judicature at Allahabad) “Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws” has described the human rights and role of police and police brutality on the detained person and role of judiciary to safeguard those rights. The researcher will discuss the violation of human rights in custody, atrocities of the police and their accountability for the same.

K.D. Gaur in his book “Criminal Law Criminology and Administration of Criminal Justice” has talk about the rights of the accused and the prisoner. The research will confer on the rights of accused and prisoner before arrest, after arrest and after conviction.

Sankar Sen in his book “Police Today” has discussed the role of police under different situations, crime, and Police psychology and ultimately it discussed the society and police and crime. The researcher will discuss the causes of custodial torture by police and its impact on the society.

Prof. Narender Kumar in his book, “Constitution of India”, discussed the all articles of the constitution with the case laws. A researcher has also discussed articles related to Accused/ Prisoners’ rights with new dimension of Article 21 of the constitution.

R.V. Kelkar’s in his book, “Lectures on Criminal Procedure”, has discussed in detail, the functionalities of the criminal administration system like Police. The searcher has discussed the provisions of Police under amended Criminal Code, and the recommendations mentioned under different law commission reports are also incorporate with the following provision.

Batuk Lal book on, “Law of Evidence”, has discussed the provisions of Evidence Act. A researcher has discussed the relevancy of evidences given by accused to police and also discussed in detail the new provisions which are essential to protect the testimonies of the accused.

Journals

Dr. D.P. Verma and Dr. Ramesh Chhajta in their article “Torture in opposition to Human Rights: A discourse”, has dealt with the meaning of torture, control mechanism against the use of torture at national and international level. The researchers tend to examine in detail the key ingredient of torture in the custody and role of bodies protect the human rights of detained.

Nirman Arora in his article, “Custodial torture in Police stations in India: A radical Assessment” has discussed the definitions of torture and police, the method of torture, the role of Supreme Court and National Human Right Commission. The researcher will

discuss the role of Supreme court in custodial Jurisprudence in parting Justice to the victim of the torture shall critically examine the Police powers on Custodial Torture.

Christopher J Einolf in his article “The Fall and Rise of Torture: A Comparative and Historical Analysis” discussed the historical change of torture on the citizen. The researchers tend to study the origin of custodial torture and examine the mechanism to ban such inhuman act.

Government Documents

The researcher has also reviewed certain reports of Law Commission of India. 77th law commission report on Delay and Errors in Trial courts, (1978) has observed that, in many cases, the accused has to wait for years for their trial of the case. The commission has recommended adopting and promoting arbitration and conciliation to remove pendency of cases. In 78th law commission report on congestion of under-trial prisoners in jail, (1979) commission further brought the problem of under-trial prisoners in jail, who are affected mentally and physically because of overcrowding in the jails. 113th law commission on Injuries in Police Custody, law commission recommended to insert new section 114B in the evidence, in case there is death of a person in Police custody, which will make police accountable for their acts. 135th Law commission report on woman in custody , recommended about arrest of women, time of such arrest, medical examination of women etc. 152nd law commission report on custodial crimes (1994) has recommended to insert section 54 A for effective investigation, in case there is allegation of torture by the police. 177th Law commission report on Arrest (2001) to regulate the powers of arrest, 180th Law commission report on article 20(3) and Right to be silent has recommended that right to silence is the fundamental, any change to this right will ultra virus the Article.

Committees: The Mallimath committee was formed to discuss the required changes in criminal law. The committee has recommended replacing the out-dated Police Act. The Justice verma Committee in 2013 has also discussed to change in the set-up of police for better performance in maintaining law and order in the state. A researcher has also discussed the National Police Commissions’ reports on the set-up of the police and the recommendations.

International Documents: Researchers has also discussed the Declarations which prohibits the practice of Torture. India is also put signatures on these conventions. A researcher has also discussed in detail the need to rectify the convention of torture. It has also discussed the all other convention which discussed the articles and principles to prohibit torture and other acts by Police Personals.

1.6 Scope of the Study:

The present study endeavors to cover various aspects of human rights and their violations in custodial torture. This study tends to analyze the reasons behind custodial torture, efficacy of law in preventing custodial torture and is confined mainly to a thorough analysis of Indian penal system. However, the international perspective on custodial torture is also discussed in brief. The researcher strictly confines its area of research to the violation of human rights in custodial torture of accused and prisoners in India.

1.7 Plan of the study

This research work consists of following chapters:

Chapter 1 is overviewed the custodial torture and human rights violations, to curb the inhuman act behind bar, India has signed may treaties to protect human rights in her respective country, and also amend many provision in different statute to penalize police official.

Chapter 2 deals with detail meaning and definitions of the custodial torture, types of the custody under criminal procedure code, history of the police torture in India, victim and perpetrator of the custodial torture.

Chapter 3 describes functions, powers of the police, as given under criminal procedure code, and how they misusing theses powers, and accountability of the police.

Chapter 4 provides that the human rights emergence, international covenants which protect human rights of the victim of custodial torture. National human rights commission role in the protection of human rights in India.

Chapter 5 detailed about legislative provisions which prohibit the custodial torture, it also discusses the recommendations of committees, reports, and law commission reports to change the relevant provision which protect the violation of rights in custody.

Chapter 6 prescribed pronouncements of the Supreme Court in dealing with cases of custodial torture and compensation to victim of torture.

Chapter 7 is dealing with conclusion and suggestions to curb such inhuman act of the police towards the accused and prisoners behind bars.

Chapter 2

History and Concept of Custodial Torture

Custodial torture is not a newly emerged evil. It is rooted in the history and can be traced from the ancient period very well. Initially, torture was an integral part of the punishment and the methods of punishment were very crude and inhuman in nature; like an eye for an eye and tooth for tooth. With the emergence of human rights, punishment modes had changed. Countries had adopted the new method of reformative and rehabilitation. While under-trials are in the custody, they cannot be subject to torture. Human rights protect the rights of the person who is in the custody and in the prison as well. Article 21 of the constitution states that right to life and dignity is available to everyone even if the person is in the custody and jail.

2.1 Origin of Custodial Torture

In 12th dynasty, about 2000 BC in Beni Hassan, Egypt, one policeman under the supervising officer had beaten a man with the stick while others were holding his legs and arms.¹⁷ *Napoleon* took the first step in the year of 1808 by coded instructions for the secret juristic procedure. During the Ancient period of Greece, citizens were not subject to torture but slaves and foreigners were considered for the torture in criminal cases. Their testimony was taken and recorded it as notes for the future wrong doer. So that no one will be dare to do such crimes in the coming years. It also helps them to keep their nation free from crime.¹⁸

Roman Empire was against the torture, but they considered it valid on a two grounds firstly, if there is a crime against the state like sedition cases, secondly, in criminal cases, Citizens were divided into two classes first, were those were not subject to torture but in the case of treason, they were treated same. Second class was of the citizens who can be tortured if criminal case is registered and solid proof or evidence is also against them.¹⁹

¹⁷ Dr.S. Krishnamurthy, *Human Rights Vol.*,1 47(2006)

¹⁸ Christopher J Einolf, *The fall and rise of torture: a comparative and historical analysis, sociological theory*, June 2 2007, D Paul University. Also available at:
file:///C:/Users/HP/Downloads/fulltext_stamped.pdf, last seen on 20/3/17

¹⁹ Peter Garnsey, *Social status and legal privileges in the roman Empire* ,141-47(1977)

With the passage of time, torture was used very often, if there was a case of high guilt and strong witnesses were not available, to find out the suspect, Judge needed to take either confession, or the testimony of two witnesses. In other cases, if there was no strong proof, the person was tortured to confess the crime. During 18th century European government started to put ban on the torture.²⁰

2.2 Origin of Custodial Torture in India

Torture and violence have been identified by the police in India ever since and it is rooted in the civilization back to ancient times. It is not limited to India; it is present in all parts of the world. History of the torture is as old as the crime of murder. Torture is a brutal act which causes very bad effect on the mind and body of the person. The various forms of torture are beating to the person, to give electronic shocks, compel to hang by limb, Cause sexual attack especially rapes, and not let that person sleep at night. These methods were used in the custody to cause a pain to the person to take revenge, who were practicing all these acts without any fear.²¹

2.2.1 Ancient Period

Torture and violence by the police can be traced as ages ago. During Vedic age (2000-1400B.C.) fire, water etc. were used to give suffering to the accused for the crime which he has committed. Throughout the Epic era (1400-1800 B.C.) police were used torture on the prisoners and a variety of form was also in exercise. Time of Laws and Philosophy (800-320 B.C.) ‘Dantanti’ was used for obtaining the confession.²²

During Mauryan Period: (322-187 BCE): Police functions were very large in scope and they were dealing with social, economical, political and religious matters of people. Moreover, they influence every aspect of human life. So the chances to cause suffering were more.²³ Mauryan ruled in India for 53 years, traces of torture can also be seen here, when one of Mauryan Ruler Nanad who seized the whole family of Chandra Gupta

²⁰ Supra 18

²¹ By Komal Kapoor & Sarthak Kapila, *CUSTODIAL TORTURE: A GROSS VIOLATION OF HUMAN RIGHTS*, (Volume 2 Issue 2)- April 2016, Journal of Legal Studies and Search,(125)2016, available at, <http://jlsr.thelawbrigade.com/wp-content/uploads/2016/04/Komal-Sarthak.pdf>, last seen on 15/3/17.

²² Srikanta Ghosh, *Torture and Rape in police custody as analysis*, 15(1993).

²³ *CIVIL AND POLITICAL RIGHTS INCLUDING THE QUESTIONS OF TORTURE AND DETENTION*, Economic and Social Council, 25 January 2001, UN Doc: E/CN.4/2001/66, Para 583, available at, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/106/82/PDF/G0110682.pdf?OpenElement>, last seen on 2/4/17.

Muraya into jail and were tortured by giving merely food for their survival. *Manu*, the Law giver who supported the practice of torture, according to him it is important for the protection of society from criminals. *Kautilya's Arthashastra*, *Kautilya* has written many books and one of them is *Arthashastra* which tells different class of pains, which was cruel in nature, they use to give torture before killing any accused, punishments was like blazing of limb, wild animals were used to kill the person, elephants' and bulls were used to crush the convicts to give death, to cut the limbs, and to give them pain while using any means. He cited that torture is used to collect confidential information. The Person was compelled to give confession on the matter if he does not follow the order he was punished by the shaving of his head.²⁴

Kalidas was the great writer in *Sanskrit language*; he described the administration of police system during his time period. He wrote about the police, that the responsibility of the police towards Public was doubtful; they exploited the public by taking bribes from them and commit atrocities on the innocent traveler to take money. It was a common practice among the police, Police were not serious for their job, they only used to approach on routine rounds or to search thieves, in case, they have doubt on a person they keep eye on the movement of that person and harass them, The police use cruelty for the confession of crime which was grave in nature.²⁵

In the *Buddhist* phase (B.C.320-300 A.D.), there was humane approach for punishment; the guilty person was treated human first. Actually it was an era of reforms; any form of torture was restricted and special provisions were made for women, children or aged ones.

2.2.2 Medieval Period

In the *Gupta* period (A.D. 320-500) in case, the evidence is not proved against the prisoners he was tried by the trial. He was not compelled to confess the crime.²⁶ During Muslim era, torture was the very common practice among the Hindu, because of their religion, they were discriminated. If the case was committed against the state, accused was dangerously influential and torture was committed on the person to confess the crime in the open court because they never wanted to show the wrong on the part of the state.

²⁴ S. Misra, *Police Brutality: an analysis of police Behavior*, 30(1986).

²⁵ Sukla Das, *Crime and Punishment in Ancient India*, 86(1977).

²⁶ G.K. Gosh, *Police in Torment*, 19 (1981).

At that time, there were three form of punishment which were recognized as very cruel in nature, *Hadd*: all crimes of theft, robbery, apostasy where equally punishable for Muslim or non-Muslim, *Tazir*: A crime likes counterfeiting coins, gambling, causing injury, minor, theft etc. The Court can use a new method of punishments like cutting off the tongue, impalement etc, *Qisas*: it is also called blood fine it was imposed in the case of homicide. The next generation is tortured to pay the blood. The great *Mughal King Akbar* has shown the human approach of punishment, he abolished the making of war of prisoners into salves.²⁷

2.2.3 Custodial Torture in Pre- Independence Era

When British came to India, everything was so disturbed. The protective agency of the state (Police) who has many functions to do like Police has magisterial function to do, or to collect revenue or many others, but was insufficient to meet the requirement. There was dissatisfaction in every part. Extortion and operation were practiced by all ranks of police officials.²⁸ Police *kotwal* were corrupt, disorganized, wicked and insufficient. Due to the concentration of power in the hand of police, they started doing atrocities and it increased day by day. The Company felt the need to organize the administration of the country. In 1832, it was found by the committee of East India affairs, while collecting revenue, police was doing atrocities on these people, who were not paying them as per their demand. They also caused pain to get confession of the crime which they might not even commit. These practices were very common among all police officers.

- ***Establishment of Torture commission in 1854***

Due to the concentration of judicial and executive powers in the hand of police, they were given many powers as well responsibilities, including Collection of the revenue but they misused these powers by doing atrocities on the public. Gradually, many complaints of the torture were registered by public against police. Government received 1959 Complaints against Police and they decided to stop getting such complaints. On 9th September 1854, the landmark decision was taken by the Governor in council St. George, who appointed a torture commission that will investigate the cases of torture at Madras. The torture commission was established in the Madras presidency, and most of the cases

²⁷ B.M. Gandhi, *Landmarks in Indian legal and constitutional History*, 26-27(8th ed. 2005).

²⁸ *Supra* 26.

were related to revenue officials & Police.²⁹ British Government was busy to spread and get established in the country, and it failed to pay attention to the welfare of the police. As a result, the subordinate rank officer became so corrupt. It was the need of time to reform the administration of the police by making new policies and meanwhile Police Commission 1860 was established³⁰.

- ***Police commission 1860***

The commission recommended to remove the military from the police, so that there can be proper protection of the country. Police will maintain peace in the society and control on internal aggression and military will protect the country from external aggression. The present Police Act was also enacted under the recommendation of the commission. In 1860 Indian Penal Code was enacted, in 1872 Indian Evidence act and Criminal Procedural law of the country was enacted to keep check on the crime and to punish the wrong doer. It also added the provision to protect the person from the torture of the police and if it is found that any injury has happened to any person in the custody that police official will be charged under the Section 330 and 331 of the Indian Penal code also made a provision in the Evidence act that any confession given by the accused to police will not be accepted in the court of law, because police was mistrusted.

- ***The Police Act 1861***

This act was modeled by the Britishers on the pattern of army, to be utilized mainly for quelling disturbance by the civil population.³¹ For the prevention and revealing of the crimes, it was important to structure the police organization; so in 1861 the Police Act was enacted. Even till date, this act is applicable in India and the whole administration of the police is exercising its duties according to Police Act.

- ***The Torture Commission of India, 1884***³²

The commission says that, torture is a pain by which crime is punished and confession is extorted. It was summed up by Dr. Johnson that every type of violence whether mental, psychological, any form of harassment which is imposed on the person under the Authority of the state.

²⁹ Supra 24 at 30.

³⁰ Giriraj Shah, *Indian police-A Retrospect*, 65(1989).

³¹ Sankarsen, *Police Today*, 48(1986)

³² The Torture commission of India, 1884.

- ***The Indian Police Commission (1902-03)***³³

This commission was instituted to consider the defects in the police administration as working under Police Act 1861, and they found that management of the police throughout the country is worst. They recommended that educated youth should be posted in police, the investigation wing should be separate from the law and order wing. Police official must be trained according to their wings. It also recommended the establishment of Criminal investigation department in all states.

2.2.4 Evaluation of Custodial Torture in Post Independence India:

The practices of the third degree torture, deaths in the police custody were keep on going, so many committees and commissions were taking step to control such inhuman practices of the police. Even Indian constitution has given the protection under Article 21 of the constitution to protect the rights of the prisoners/ under trials and it was further strengthened when the D. K. Basu case³⁴ was held by Supreme Court to protect the rights of those who are arrested by the police, so that they would not become the subject of torture.

- ***Reports of National Police Commission 1977***

The police commission was established to give recommendations on the police administration. It submitted its 8 reports out of which, 4th report focused on the atrocities done by police in the custody and methods to deal with it. It recommended to higher authorities of the police to visit police stations often to keep check on the police and to stop ill treatment of the police, in case the accused is claiming of torture on him by police he must be checked medically, If there is any case registered of torture and death under custody it must be inquired by the Judicial Magistrate.³⁵

³³ *The Indian Police commission (1902-03)* available at, <http://www.police.pondicherry.gov.in/Police%20Commission%20reports/THE%20INDIAN%20POLICE%20COMMISSION%201902-03.pdf>, last seen on 19/3/2017.

³⁴ D.K Basu v State of West Bengal, AIR 1997 SC 610.

³⁵ *The National Police Commission (NPC) Some Selected Recommendations of the National Police Commission*, available at, <file:///C:/Users/HP/Desktop/my%20work/report%20police%20commissions/national%20police%20commission.pdf>, last seen on 20/3/17.

- ***Rebeiro Committee (1998)***

Due to excessive complaints from the public about the illegal activities of the police where they were misusing their wide power of arrest in cognizable cases and brutality in custody, this committee was appointed to check the root of these activities. It recommended that, it is important to establish separate wing for the fair investigation to stop crime of custodial torture.³⁶

- ***Padhmanabhaiah Committee on Police Reforms (2000)***³⁷

Para 26 of the committee recommended that, in case of death and rape in the custody it must be enquired by judicial authority and in case of complaint regarding any vulnerability of the police, first approach must be made to higher officer of their department in, formal or informal way but if the victim is not satisfied with their decision he can approach to non-statutory District Police Complaints Authority, which is headed by District Magistrate.

- ***Mallimath Committee Recommendation (2000)***

A Committee on reforms of Criminal Justice System of India was appointed on 24th November 2000. The committee consisted of Chairman Dr. Justice V.S. Malimath. He observed that if there is torture on the accused, when the accused is produced before the magistrate he can inform to him/her about the torture, magistrate can send the accused to judicial custody³⁸. Committee recommended the recording of the interrogation of the accused in the video, so that there would be no chances of torture on the accused to extract the information.³⁹

- ***Police Act drafting Committee 2005***

This committee prepared a draft to replace the police act 1861 with the new model Police Act, 2006 to make police accountable and respect to human rights. But it didn't pass

³⁶ *Report of the Ribeiro Committee on Police Reforms*, available at, http://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/analysis_ribeiro.pdf, last seen on 20/3/17.

³⁷ *The Padmanabhaiah Committee on Police Reforms*, available at, <http://lexpress.in/criminal-justice/the-padmanabhaiah-committee-on-police-reform>, last seen on 20/3/17.

³⁸ Mallimath Committee 2000, *Committee on reforms of Criminal Justice System*, Para 4.9 (63), available at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf, last seen on 20/3/17.

³⁹ *Ibid*, Point no.34 (276)

yet⁴⁰. In the case of *Parkash & others v. Union of India*⁴¹ the two petitioners approached to the court to change the new Police Act as per it is recommended by many commissions and committees, court held that until there is no law to deal with this problem, the guidelines which is given under *Vineet Narayan v Union of India*⁴²would be followed.

- ***5th Report of Second Administrative Reforms Commission on Public Order (2007)***

The commission recommended installing CCTV camera in all police stations so that all the practices of the police can be supervised.⁴³

- ***The Draft Report of the National Policy on Criminal Justice System (2007)***

Committee recommended, for conducting a fair trial, it is important to have fair investigation and all the information which is taken from accused must be free from any influence, but, what if it is taken under influence? Though it will not be acceptable in the court of law, it is very difficult to trace the torture in the custody. So to overcome this problem, every state should make sure to install CCTV camera in the custody, so that the statement made by the accused can be accepted with fair means⁴⁴.

- ***The Prevention of Torture bill 2010***

This Act provides Punishments for the preparatory of the torture who does such act for the purpose of causing intentional harm to the person for the purpose of taking confession or other, and if there is discrimination on the caste, sex, language, residence, the punishment will go upto 10 years and fine.⁴⁵

- ***Justice Verma Committee 2013***

Recent recommendation was given in *Ram Singh v. state of NCT Delhi*⁴⁶ in the well known case of Damini rape case New Delhi. Committee recommended that the all

⁴⁰ Police Act, http://mha.nic.in/sites/upload_files/mha/files/pdf/mpolice_act.pdf , last seen on 20/3/17.

⁴¹ *Parkash & others v. Union of India*, (2006) 8 SCC 1.

⁴² *Vineet Narayan v. Union of India*, (1998) 1 SCC 226.

⁴³ 5th Report, *Second Administrative Reforms Commission*, Para n. 7.5.1.11b (173), available at, <http://www.arc.gov.in/5th%20REPORT.pdf> ,last seen on 20/3/17.

⁴⁴ Committee, *Draft National Policy on Criminal Justice*, Para 6.5, 6.6, (27)(2007), available at, http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/DraftPolicyPaperAug.pdf, last seen on 20/3/17.

⁴⁵ S.3, *The Prevention of Torture Bill, 2010 (Pending)*, Available at, <http://www.prsindia.org/uploads/media/Torture/prevention%20of%20torture%20bill%20>, last seen on 20/3/17.

⁴⁶ *Ram Singh v. State of NCT Delhi*, 7 March, 2013.

complaints regarding the rape, death, or torture must be investigated by the Police Complaints authority, so that police can be made accountable for their acts.⁴⁷

2.3 Modern Concept of Custodial Torture

Custodial torture is a torture or pain, both physical and mental, inflicted by the Police personnel on the person who is in the custody of the Police. It is an assault which has been practiced from years. This practice was highly supported ever since the adoption of Human Rights Declaration in 1948. The bright light of human rights has expanded to the world. The importance of human rights can be seen in the constitution of India as well. These rights equally respect all, even if the person is detained. All the inhuman practices of torture have been prohibited at international as well as national level.

2.3.1 Meaning and Kinds of Custody: The Arrest of person leads to custody. There is no definition in the law which defines custody. There must be two things to constitute custody: firstly, when a control is imposed on the movement of the person by the police, and he has no liberty to go anywhere, secondly, such control must be imposed by police officer, directly or indirectly⁴⁸. During, the person is in custody if he/she faces any torture by the authority of the law it amounts to the crime in the Custody.⁴⁹ Custodial torture is the term, which is used for relating torture, which is committed by police authority against any person.

In *Roshni Devi and others v joint Sectary of Govt. of Tamil Nadu*⁵⁰, Court held that, in the case of custodial torture, it is not compulsory that the victim should be in the police station, the important is that he/she is under the control of the Police. "Police custody means placement of the victim with police during any action, which resulted in the loss of freedom of movement of the victim." But there is difference between the jail and the custody definition of the jail is mentioned under different statutes as Prison Act, 1894

⁴⁷Justice Verma committee Report 2013, *Amendments in Criminal Procedure code*, 318-319(2013) <http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf>, last seen on 20/3/17.

⁴⁸ Batuk lal, *The Law of Evidence*, 181(19th ed. 2010).

⁴⁹ 152nd Law commission of India, *Custodial Crimes*, (1994) available at, <file:///C:/Users/HP/Desktop/my%20work/reports%20law%20commission/law%20commission%20152.pdf>, last seen on 20/3/17.

⁵⁰ *Roshni Devi and others v. Joint Sectary of Govt. of Tamil Nadu*, 1984(15) ELT 289 Mad.

“Prison means jail or a place or any other land and building which is used to detain a person. But it does not include the Police custody”⁵¹. Under Criminal Procedure code: Prison means any reformatory or brostal institution or any place which is declared to be jail/prison by the state government⁵²

2.3.2 Types of custody

Arrest of a suspect is leads to custody and within 24 hours of the arrest, person is presented to the judicial magistrate and the detention of the person in custody will be decided by the Magistrate. The person may be kept in police or may be in judicial custody as per the decision of the Magistrate and he can also get bail with or without fulfilling bond. The only difference between police and judicial custody is that, under police custody the suspect is interrogated and under judicial custody suspect cannot be interrogated unless there are special conditions. Section 167, of Criminal procedure code defines types of custody which can be classified as:

- Police Custody
 - Judicial Custody
 - Executive Custody
 - Custody under Other Statutes
-
- **Police custody:** when police receive any information or any complaint about a crime, the police officer will reach the spot of occurrence and will bring that suspect to the Police station to prevent the suspect to commit any act further. If the person is *detained*⁵³ in the lock-up is called police custody. On the order, of the Judicial Magistrate, accused can be send to Judicial Custody.

⁵¹ S.2 (1), the Prison Act, 1894.

⁵² S.266(b), The Criminal Procedure Code ,1973:

Prison includes: 1) any place which has been declared by the state government ,by general or special order, to be a subsidiary jail; 2) any reformatory, brostal institution or other institution of a like nature

⁵³ S. 266(a), The Criminal Procedure code 1973:

Detained: it includes detained under any law providing for preventive detention.

After such detention, the suspect (*accused*)⁵⁴ must be produced before the Magistrate of the area within twenty-four hours.⁵⁵ If the investigation cannot be complete within 24 hours, Police officer will forward a copy of entry relating to the case and the accused to magistrate. The custody shall not exceed to 15 days in whole. Magistrate shall not authorize the detention of accused in any custody until he is not produced before him. Signature of the person is also taken as proof that he was produced to the Magistrate. The police custody can be exceed to 15 days⁵⁶, if the offence of accused is punishable with death or life imprisonment or where imprisonment is not less than 10 years, custody it can be extend to 90 days, The time may also be extended to sixty days in case it is related to other offences, after the completion of period, the person can be released from the detention on the bail as per the provision of Chapter xxxiii of Criminal Procedure Code. Accused shall not be release unless he/she cannot furnish the bail.⁵⁷

Police custody can be a direct or an indirect custody: when the person is arrested and brought to Magistrate within 24 hours, it is a direct custody. When accused is not in the custody, but he is on bail or under the surveillance of the police, it is an indirect custody. Indirect custody can be understood from this case, in *Empress v Lester case*⁵⁸ on the charge of murder English women was arrested and was taken in a Tonga while going the policeman left the Tonga and went to another village to bring a fresh horse. In the meanwhile, arrested lady called to her friend to tell him about the crime she has committed. During the trial she taken the plea that she was not in the custody when she

⁵⁴*Note:* The word accused has not been defined in any code, but the accused means the person charged with an infringement of the law for which he is liable and if convicted then to be punished.

⁵⁵ S.41, The Criminal Procedure code, 1973.

⁵⁶ *Committee on Reforms of Criminal Justice System Government of India, Ministry of Home Affairs*, Para 28 (275)(2003): Section 167 (2) of the Code be amended to increase the maximum period of Police custody to 30 days in respect of offences punishable with sentence more than seven years. Available at, <http://www.pucl.org/Topics/Law/2003/malimath-recommendations.htm> , last seen on 22/3/17.

⁵⁷ *Laxmi Narain Gupta v. State*, 2002 Cri LJ 2907: “Along with the present petition at least another 20 cases have been listed, where the accused are in judicial custody, merely because they are poor. In each of those cases, directions have been passed by the Courts concerned, for admitting them to bail. They are in judicial customary because they have not been able to arrange a surety while the orders for their judicial remands are being passed in a routine manner.” This drawback also persists when the accused is unaware of his rights”.

⁵⁸ *Gurbaksh Singh v. state of Punjab* (1895) 20 Bom 165.

called to her friend and her act is not attracted section 27⁵⁹ of the Evidence Act. It was held that, mere absence of the police is not amount to custody on her part.

In *Gurbaksh Singh v state of Punjab*⁶⁰, court held that if a person is on bail and he is giving information regarding the facts of the case, he is attracting section 27 of the Evidence Act, because, if a person is on bail, he is still under the custody of the police. In this case, word Custody depict a form of a watch, restraint or lack of free will to depart, a man under police interrogation is certainly subjected to more restraint than a man who comes voluntarily to make a statement before the police.

- **Judicial custody**⁶¹: it is the jail or the prison; where an accused or convicted are kept. In case of accused, accused will be kept in Judicial Custody on the order of the Magistrate or until he gets bail. Custodial torture is not only limited to Police custody it also can be traced in judicial custody. Accused has to be in the jail for years for trial of the case and wait for the judgment of the court. It is also a form of torture. In the 78th Law Commission Report on congestion of under-trial prisoners in jail, (1979)⁶² it was suggested by commission to keep the under-trial prisoner separated from, convicted ones.
- **Executive Custody**⁶³: after the arrest of the person, he must be produce to the Magistrate, in case the judicial magistrate is not available, the detention of the person will be deal by Executive Magistrate having jurisdiction that has the same powers. The officer in charge of police station will send the suspect and detail of the accused like copy of the entries in which they mentioned the full detail of the person, about crime. Executive magistrate has to record in writing about custody. The custody may not exceed more than seven days and after the accused can be released on the bail. Before the expiry of the period, the Magistrate shall send the record of such detention to the nearest Judicial Magistrate⁶⁴.

⁵⁹ S. 27, The Evidence Act 1872: How much information received from the accused may be proved.

⁶⁰ *Gurbaksh Singh v. State of Punjab*, 1980 Cri LJ 1125 SC

⁶¹ S.167, The Criminal Procedure Code 1973.

⁶² 78th Law Commission of India Report, *Congestion of under-trial prisoners in jail, (1979)*, available at, <http://www.lawcommissionofindia.nic.in/51-100/Report78.pdf> ,last seen on 22/3/17.

⁶³ S. 167(2A), The Criminal Procedure code 1973.

⁶⁴ *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J. Kulkarni* , AIR 1992 SC 1768 : The question regarding arrest & detention in custody was dealt with it was held that the magistrate under S.167(2) can authorize the detention of the accused in such custody as he thinks fit but it

- Apart from the police, there is also other governmental authorities like: Director of Revenue Intelligence, Directorate of Enforcement, Central Reserve Police Force, Border Security Forces, Central Industrial Security Forces, The State Armed Police Intelligence agencies like the Intelligence Bureau, Central Bureau of Investigation, Central Investigation Department, Traffic Police, Mounted Police and ITBP, who have the power to detain a person and interrogate him in connection with offence. There are instances of torture and death in the custody as well.⁶⁵

2.4 Custodial Torture: Contemporary Definitions

Custody is the protective care of someone or something. It is the place where a person loses his personal liberty, and freedom of movement is totally under the control of law implementation agencies.⁶⁶ Torture by Police official during arrest is an attack on their dignity and personal liberty of a person.⁶⁷ Torture by strong on weak shows the power of the strong to suppress the weak. It depicts the dark side of the civilization.⁶⁸ According to the Law Commission of India, crime by public servant on a person who is in custody amounts to Custodial Torture.⁶⁹ According to Dr. S. Subramaniam “use of force which puts psychological pressure on a person is Custodial torture”.⁷⁰ As per Justice B.P. Jeevan Reddy, Custodial Torture includes death, rape, excessive beating in public custody.⁷¹

- **Definitions of Torture under American Encyclopedia;** it defines that Torture means “to cause severe physical pain upon a person to force him to act against his will or punish him” it further explains that it is not new to this world, it exists from ages. It is also called ‘Third Degree’ under which perpetrators force the victim to do or to say something against his will and cause intense mental and physical torture.

should not exceed fifteen days in the whole. Therefore the custody initially should not exceed fifteen days in the whole. The custody can be police custody or judicial custody as the magistrate thinks fit.

⁶⁵Palok Basu (Former Judge, High Court Of Judicature at Allahabad), *Law Relating to Protection of Human Rights Under The Indian Constitution and Allied Laws*, 756 (1sted, 2002).

⁶⁶ Y S Bansal, Murali G and Dalbir Singh, *Custodial Deaths-An Overview of the Prevailing Healthcare Scenario*, J Indian Acad Forensic Med, 32(4) 315.

⁶⁷ Gupta, Raj Kumar, *Human Rights and Custodial Crimes*, 118(2010).

⁶⁸ Supra 65 at 741.

⁶⁹ S.K. Gosh, *Politics of Violence*, 78(1992).

⁷⁰ S. Subramanian, *Human Rights International Challenges*, 184(2004).

⁷¹ Justice B.P. Jeevan Reddy, A Paper presented in seminar, *Custodial Crime, An Affront to Human Dignity*, *Human Rights 2001*, available at, <https://www.unicef.org/wash/files/sanall.pdf>, last seen on

- **According to Oxford dictionary:** Torture means to use severe pain on someone to get information or to compel him to say something which can go against them.⁷²
- **Amnesty International Defines;** Torture is a well organized and designed act to causes a severe pain on the person.⁷³
- **The World Medical Association:** - It specifies that torture is, when one or more person by themselves or from the order of the higher authority causes a willful suffering which is an intentional and organized, to cause a physical and mental harm to person to get information or to make a confession for the same or for any other reasons.⁷⁴
- **Definition of Torture given under Inter-American Convention to Prevent and Punish Torture (1975):** During criminal investigation, if any act of the official which cause physical and mental pain to the person with different purposes like for preventive measures, to give him punishment or intimidate the person to get information. In other words, torture is intentional acts which not only weaken the mental and physical ability of the person however it devastates the personality of the victim”.⁷⁵
- **Convention against torture in 2000 defines the torture⁷⁶ as;** When any act which is done with intention by one person to cause pain or suffering to other person with the purpose to get an information or to compel him to confess the crime which may be committed by him or any other person. Such act is done by the public official himself or by any other person who has the same power. This definition alludes that following are the main elements which as needed to constitute a torture:
 - a) A severe pain either mental or physical
 - b) With the consent of the state authorities
 - c) To purpose of such is to take information

⁷² *American Encyclopedia*, available at, <https://en.oxforddictionaries.com/defintion/torture>, last seen on 20/3/17.

⁷³ Amnesty International Report, *Torture*, p.35 (1974-75), also available at, <file:///C:/Users/HP/Downloads/act400011975eng.pdf>, last seen on 3/2/17.

⁷⁴ World Medical Association of Tokyo adopted by the 29th World Medical Assembly, Tokyo, and Japan on October 1975.

⁷⁵ Art. 2, The Inter-American Convention to Prevent And Punish Torture, 1975.

⁷⁶ Art. 1, United Nations Convention against torture and other Cruel, Inhuman or Degrading treatment or Punishment (2000), available at, [file:///C:/Users/HP/Downloads/100296%20\(1\).pdf](file:///C:/Users/HP/Downloads/100296%20(1).pdf), last seen on 3/2/17.

Two most important acts which constitute torture: a) The act of the torture must be supported by the facts that it really happened. b) It must be different from other ill-treatment because it is done for the purpose of information.

- **Prevention of torture bill, 2010**⁷⁷ which is pending in the parliament and section 3 of the bill is defining torture: Any public officer who by himself or if he under the pursuance of other public servant does any act with the intention to extract an information from third person and for that if they use such methods which cause a pain to the person it may be physical or mental suffering to the person. If such pain, hurt & danger is permitted under the law, then it will be justifiable.

Major Rechar was an officer in the United States army; he has given definition of the torture which is inflicted by the police during investigation. He has also introduced the third-degree phase into police parlance. According to him, First degree defines the legal arrest and custody. Second degree depicts the illegal arrest and custody. Third degree means the physical force used on a suspect by police to force him, to tell the truth.⁷⁸ After the arrest of the person he is kept in the custody and police have to interrogate that person with a purpose to get information, but using the third degree method to extract information is totally prohibited. To stop such inhuman act of the police, in 1994, the 152nd Law Commission Report recommended to insert section 114B in Indian Evidence Act, where it will be presumed that if there is any injuries caused to accused, the police official will be presume for the custodial torture.⁷⁹

2.5 Perpetrators of torture

As per the definitions given above, torture is done by those who protect the law and order in the society. Torture tend to give pain or suffering during detention it must be got effected with intention by the authority. Torture by Private individual is a Domestic Crime.

⁷⁷ Prevention of Torture Bill, 2010(pending).

⁷⁸ Elaine Scarry, *The body in pain: the making and unmaking of the world*, 28(1985), available at, <https://books.google.co.in/books?id=uFluGXva-ZkC&printsec=frontcover&dq=inauthor:%22Elaine+Scarry%22&hl=en&sa=X&ved=0ahUKEwiH2ZLSptjTAhVCro8KHSpVAlIQ6AEIJAA#v=onepage&q&f=false>, last seen on 25/3/17.

⁷⁹ Supra 65 at 747.

- *Police*: the police are governed by rules and regulations made by the state government. And it protects the state and maintains law and order in the state. It has power to prevent the crime and if any person breaks the law, it will arrest and put him behind the bar. Police are the real friend of the public. But, if it become corrupted or get influenced by any external factor, anyone can use them against their opponent. It is important to make them impartial and also accountable of their acts.
- *The Military*: Border Security Force, Central Security Force, Central Reserve Police, Indo-Tibetan Border Police, they all work in different sphere but they work to prevent the crime like smuggling, etc. and protect the territory of India, so that no can illegally enter/migrate in the country. They promote security on the border areas. They are independent and have their martial court and have un-limited powers. If they arrest any person, they have to produce to the concerned magistrate as given under their laws. *Paramilitary* is performing same functions like military does; they maintain security at the international border and maintain law and order.
Other Originations: there are other organizations like Central Bureau of Investigation; it will investigate only those cases which are ordered by the central government or on the order of High Court or Supreme Court.
- *In some cases doctors, psychiatrists or nurses also involve in such practices on the order of public officials*: in case of injuries on arrested person, he must be examined medically by the registered medical practitioner who will give the proper detail of wounds and suffering of the person. If the protector of the law can torture the person to whom he supposed to protect, he can also do certain other illegal acts like giving bribe to doctor or to pressurize them to do the same as police officer command him or her to do.⁸⁰

2.6 Victims of Torture

There are two instances when one person become the victim under any circumstances, first, if he is weak and cannot protect himself/herself, and second he is not aware about his rights. Anyone can fall under the category of victim either it is man or woman, young,

⁸⁰ *Vienna Declaration and Programme of action* (1993), Para 58: universal respect must be given to the medical ethics and role of health personnel, in the protection of the prisoners and detainees against any torture or other inhuman degrading punishment. Available at, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>, last seen on 28/3/17.

old, religious people, poor or rich, etc. Weaker part of the society is always unable to protect their interest and easily become the subject of torture. They lack in the economical and Political approach and never raise their voice against the atrocities of the police. Usually, they are arrested without following proper procedure and detained in custody which causes them to experience torture. The rich segment of the society knows its interest and in case of any violation, they directly approach to higher authorities who have full dominance over police. They are not subject to torture as the police are afraid of their recourses.

Following are the victims of the torture:-

- **Dalits and Adivasis:** Many Indians are members of the scheduled castes (castes which are recognized by the Constitution as oppressed) or members of the scheduled tribes, known as '*adivasis*'. They are the poorest and most weak group of people in India. Article 17 of the constitution of India has protected their rights by prohibiting the untouchabilities practices in the India and a special Act (Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also enacted by the parliament which punishes those who insult the people of these classes.⁸¹ Even after taking such steps there is a need to change the mindset of the people who still think they are the '*Dalits*'. The cases of torture is not stopped yet, daily there are news about such incidents, one '*Dalit*' person was arrested, on the charges of smuggling and was brutality tortured by police and his limbs were chopped.⁸²
- **Women:** '*Varmahmihira*' says that women are pure and without any blame, they deserve respect and highest honor. Due to feeling of weakness and subordinate in the society, they are targeted most for the Torture. When a woman is involved in a criminal case, she faces many problems during the investigation and trial. Especially the women of weak strata face a lot of difficulties as they easily become victim of custodial violence in the hands of police. For the protection of the women, special rights have been given in the constitution,⁸³ which secure the place of women in the sector of education, employment and all government and private sector by giving them little reservations. In *State of*

⁸¹ Scheduled Casts and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

⁸² Manjeet Sehgal, *Dalit Youth Tortured By Police In Sangrur*, Indiatoday (1/1/2016) available at, <http://indiatoday.intoday.in/story/dalit-youth-tortured-by-police-in-sangrur/1/560115.html>, last seen on 21/3/17.

⁸³ Art. 15, The Constitution of India, 1950.

*Punjab v. Gurmait Singh*⁸⁴, the court has given view on the heinous crime like rape, which shakes the whole society and put them in pain. The person who is committing such crime is not only breaching the law, he breaches the privacy and the integrity of the victim and causes mental and physical Torture to them.

- **Children:** Children are the most vulnerable group. Torture on the children can cause an everlasting effect on them and it is different from the effect as caused to the adults. The worst form of torture on the children is to make them a witness of torture, which is inflicted on the parents or close relatives. For their protection of children special attention is given at national as well as international level.⁸⁵ Many declaration and conventions are done at an international level to protect the rights of children and in 1948, Declaration of Human Rights came into existence and in 1966 International conventions were made on civil and political rights. The framework of these conventions provides a model to the member states for the treatment of the young offender. Article 37 of the Convention⁸⁶ is talking about the rights of child and it requires every State who is a party to follow the same in their country and to ensure the following: (a) The Child shall be protected from cruel, merciless and humiliating treatment. They should be protecting from any form of torture. Punishments like death penalty or life imprisonment to a child below the age of eighteen years is totally prohibited. (b)The arrest and detention of the child should be according to the procedure of law if needed and they are not allowed to keep for a long period and the basic rights of liberty should not be taken away.

The Child shall be treated with humanity and dignity. In 2002 Juvenile Justice (Care and Protection of Children) Act was enacted by legislation for the protection of the juvenile and Section 23 of the act states that when a child is under the custody of police, any kind of mental and physical suffering is prohibited.⁸⁷

- **Politicians and Human Rights Activists:** When the battle of independence was going on, many freedom fighters were placed in the jails. They were ill-treated and tortured by

⁸⁴Punjab v Gurmait Singh, AIR 1996 SC 1393.

⁸⁵ Dr.H.O.Aggarwal, *International law & Human Right*, 107(12th ed.2014).

⁸⁶ Convention on the Rights of Child, 1989.

⁸⁷ Dr. S.C. Tripathi and Vibha Arora, *Law relating to woman and children*, 352 (4th ed. 2010).

the police to stop their battle for independence. Now day's politicians used the police to use force against their opponents.⁸⁸

- **Religious Persons:** India is a secular country where people of different religion live together. During 1984 after the assassination of former Prime minister, Mrs Indira Gandhi by two of her Sikh Guards, the Sikh riots taken place in Punjab. At that time, People of Sikh community were ill-treated, tortured and detained.⁸⁹

2.7 Methods of Torture

Any form of torture in the police custody is prohibited until it is not prescribed in the law. It has seen in many cases that torture becomes an independent tool for creating terror in the minds of suspect.⁹⁰ World Conference of Human Rights, Para 59 states to all nations to take effective measure to rehabilitee the mental, physical and social aura of the effected person.⁹¹ The techniques of torture used by police can be divided into three parts: Physical, Psychological, and Sexual:-

Physical Torture: The torture on the body is very painful. Police official do it in such a way that it is undetected by an ordinary examination. There are different types of physical torture, namely: **Beating:** It is used very frequently by police and it is most common method to give pain. Different modes like sticks, cables, iron rod, chains, belt, etc. are used to beat the victim. Instead of this kicking and punching are also example of severe beating is a common practice.⁹²

Severe kind of torture which gives the fear of sudden death, like, **Finger Torture:** In this form of torture, a pencil is put in between the two fingers and is pressed very hard against the object. Sometimes it also pulls out their nails. **Falanga:** It is also a form of beating which is done on the sole of feet. It has long term of consequences and sometimes, it may make a person disabled for several years. **Suspension:** In this form of torture, legs and arms tied with rope. **Cold Torture:** In this form of torture, the person is kept in cool place.

⁸⁸ S.P. Srivastva, *The Indian Police in the Twenty first century*, 16 (Joytilk Guru Roy, ed., 1999).

⁸⁹ Available at, http://www.sikhiwiki.org/index.php/1984_Massacre_of_Sikhs, last seen on 20/03/2017.

⁹⁰ Dr.S.K.Awasthi(Advocate,Supreme Court) R.K.Kataria B.A.,LLB., *Law Relating to Protection of human rights*, 875 (2003): Champers v Florida, 309 US 227(1940).

⁹¹ Supra 80, part 2-para 59.

⁹² Raghbir Singh v State of Haryana, AIR, 1980 SC 1088: In this case, the arrested person was tortured and beated and his medical examination revealed the cruel cause of death as asphyxiation, and there was torture on both the soles of the foot of the victim.

He forced to sleep on damp floor, sometimes he is also compelled on icebed etc. Heat Torture: it is a very inhuman act and the victim is compelled to stand at the temperature of 30 degree Celsius under the sun. Electric Shock: It is inflicted on the sensitive parts like chest or on genitals. It makes them mentally and physically weak. Sometimes it may become the reason of death.⁹³

Psychological Torture: It can be done by many ways, like. They are compelled to sign a false statement and force to commit irrelevant act. Sometimes they are also forced to witness torture of other victims. Victims are threatened by the police official that if they will not work according to them, the consequences will be suffered by their family members, friends and kins.

Sexual Torture: Women are the most common victim of sexual torture. After the Mathura rape case, where girl was raped by the two constables, it compels the judiciary to think upon the atrocities of the police and to make law which will protect the interest of the women.⁹⁴ National Expert Committee on Women Prisoners divided the sexual torture into two parts:

*Sexual Torture Using Instrument*⁹⁵: women are victim of custodial torture in the custody and they are being harassed by the police official during investigation and during the punishment. The rape and death is very common in practice other inhuman practices were also traced in the history like Infiltration rods, bottle, baton in vagina, Stimulating shock to sexual organs, Injury of breast, genital organ etc.

Sexual suffering without using any Object are: Police official use abusive words and force them to being undressed in face of others, rape in the presence of family members, compelling them to do intimation with same sex, pressing of breasts, to compel the masturbation, force to witness sexual torture of others, to compel the victim to do sexual torture with others, to compel the victim a forced pregnancy, to click the indecent photos

⁹³ S. Subramaniam, *Human rights and police*, 17(1998).

⁹⁴ Sarla Gautam and Aaju Gautam, *Victim of Torture in Police Custody: A Case Study*, International Journal Of Higher Education And Research, 2-4(2016), available at, file:///C:/Users/HP/Downloads/1-8.pdf, last visit on 4/4/17.

⁹⁵ Report of the National Expert Committee on 'Women Prisoners' (1986-87).

of the victim. In Sheela Barse case⁹⁶, the Supreme Court has given directions about arrest of the female and protects them from sexual assault during their confinement.

In the end, Custodial torture cannot be justified by means and using third-degree method behind the doors of the police. No society permits it.⁹⁷ Torture is an intended act to cause physical suffering on someone non-consenting, when there is ample limitation on the autonomy of a person. Breaking the will of the victim is the central part to commit a torture on a person.⁹⁸ The duty of the police is to protect the public and maintain peace in the society but crime in the custody is the proof that there are violating the rule of law of the country. It is still keep on going, in spite of many guidelines issued by Supreme Court to protect the rights of the person in the custody.

Torture is not only limit to police custody; it is also prevalent in the judicial custody. The Sunil Batra's⁹⁹ case is the proof of it, when Supreme Court expanded the rights of the under-trials and prisoners. It was held that that over-crowding in the jail is the other form of torture on the mind and the health of the person. Article 21 of the constitution which states that life is not only a mere animal life it must be life with human dignity and it is same for all including wrong-doers.

⁹⁶ Sunil Batra (1) v Delhi Administration , AIR 1978 SC 1575

⁹⁷ D.K Basu v State of West Bengal ,AIR 1997 SC 610

⁹⁸ Micheal Davis, *The moral justification of torture and other cruel, inhuman, or degrading treatment' international; journal of applied philosophy*, January 2005, vol. 19, 161-78, also available at : <file:///C:/Users/HP/Downloads/Moral%20Justifiability%20of%20Torture.pdf>, last seen on 20/3/17.

⁹⁹D.K Basu v. State of west Bengal, AIR 1963 SC 1295.

Chapter 3

Custodial Torture and abuse of Police Power

“Nothing is more weak and unconscionable than a person in police custody being beaten up and nothing impose a deeper wound on constitutional rights¹⁰⁰

The real concept of custodial torture cannot be understood without a proper discussion on the role police and custodial torture. It is important to understand the powers, functions and arbitrariness of police who are the main perpetrators of the torture in the custody. The duty of the police is to maintain law and order, protect the state from integral aggression and to arrest the law breaker. Police is the internal defense of the State which preserves the enforcement of the law and also regulates rule and order.

As per Dictionary of Oxford, Custody is the place which gives protection and torture in it is the most horrible crime in the today’s world because protector of the law is violator here. Police¹⁰¹ is considered functionary of state that plays a very significant role to maintain peace and protect the state from violence and disorders. Police is the subject to the discretions of the state; every state can make their own law related to organization of the police. Constitution laid a duty on the state to protect the society from aggression and any kind of situation which break the rule of law. In case of misuse of power by police, it becomes the duty of the state government to be in rescue. Whenever there are violations of the human rights in the custody, the states must take an action.¹⁰² Supreme Court has given directions which must be followed when a person is arrested and kept in custody.

¹⁰⁰ Kishore Singh v. State of Rajasthan, AIR 1981 SC.

¹⁰¹ Art. 246, The Constitution of India 1950: The powers and responsibilities of the union and states are demarcated in the Constitution of India. It distributes the legislative powers between the Parliament and the State Legislative Assemblies. It refers to three lists of subjects given in the Seventh Schedule of the Constitution. List 1 is the Union List, which includes subjects in respect of which the Parliament has the sole powers to make laws. List 2 is the State List, enumerating subjects in respect of which the State legislature has exclusive powers to make laws. The third list is the Concurrent List, consisting of subjects on which the Parliament and the State Legislatures have concurrent powers to make laws. The police, public order, courts, prisons, reformatories, borstal and other allied institutions figure in the State List.

¹⁰² Raghavan R.k., *Policing in democracy: In India and USA*, 9(1999).

The term police originated from the Greek word '*Politeia*' that means 'the condition of the State and government', It is the most important organ of the Government which is responsible for the safety and security of the state and also sustains and regulates the law and guard the life and property of the people and to prevent the crime.

It is a well known fact that in every nation, there is a police set up which protects the state internally and also use some sort of force in society which are not traceable to the rule of law. This has brought unpopularity of the police in all societies¹⁰³.

When a person is arrested by the police, he is kept in the custody and the legal duty of the police is to investigate the registered case and make an arrest after arrest he must be kept in the custody for interrogation the purpose to prepare a charge sheet and initiate the trial in the court. During the investigation of an offence, police cannot use any form of torture to extract information from that person. Law totally prohibits the force. During interrogation they cannot compel accused to answer, the accused has a right keep silence on those points where it seems to him that it can expose him to the guilt of the crime, because law presumes him innocent until and unless his guilt is not proved beyond reasonable doubt. Police cannot punish him for the offence which is not proved yet, any pain/ punishment which is given by police to the suspect or accused is also called *extra judicial execution*¹⁰⁴. Law is protecting the rights of the person who is arrested.¹⁰⁵

3.1 Police custody and Torture an age-old Phenomenon

The existence of Police force existence in India can be traced from the ancient times.¹⁰⁶ It can be traced from the Epic of the history, '*Ramayana*' and '*Mahabharata*' also gave the reference of police system. '*Manu*' also emphasized that the force of the police is essential to maintain peace in the society so that people can live without any revolt or tension

- **Gupta Dynasty:** Gupta ruler is known for the best work he has done to maintain law and order through well-planned structure of the Police. During *Gupta dynasty*, for the security

¹⁰³ D. N. Kaul. *Reflection of Police, Society and Allied Subjects*, 11(1988).

¹⁰⁴ Extrajudicial punishment is punishment for an alleged crime or offense carried out without legal process or supervision from a court or tribunal through a legal proceeding.

¹⁰⁵ S. Krishnamoorthy and Another's v. state of Tamil Nadu, (2008), 2MLJ (Cr) 1217.

¹⁰⁶ Prof. N.V. Paranjape, *Criminology & Penology with Victimology*, 387(reprint 2016).

of the village, it was the collective responsibility of the village head-man to keep law and order situation in the village.¹⁰⁷ During Mughal Rulers, the *Fauzdar* was the in-charge of the entire police force and many police officials were subordinate to him, who was called '*Darogas*' or '*Kotwals*'. '*Sipahi*' was at the lowest rank. There was also detective branch known as '*Khuphia*' which assist the police in the criminal investigations.¹⁰⁸

- **British government in India:** According to the Regulations of 1816, village headmen were made *ex-officio* heads of Police. They arrest and forward offenders to district authorities. The police commission of 1860 recommended continuance of the current policing system with little changes. It recommended that; Police functions should be separated from the Military. In the province, there must be an Inspector General who will supervise the Police administration. He would be answerable to the Provincial Government. The Village police must be supervised by the Superintendent of the police; he would be accountable to the collector of the district.
- In 1902, Police Commission was appointed by Lord Curoz¹⁰⁹ to suggest recommendation on the current working of the police and recommended that to maintain law and order it is important to reform the existing rural set up. It highly needs the aid of the village community through the agency of '*Chaukidars*'.
- The Police Act, 1861 was modeled by the British on the pattern of army, that to be utilized mainly for quelling disturbance by the civil population.¹¹⁰ The structure of the police organization in India is created by the Police Act, of 1861.¹¹¹
- The Torture commission of India, 1884¹¹², states that torture is a pain by which crime is punished and confession is extorted. It was summed up by Dr. Johnson that every type of violence whether mental, psychological, and other form of harassment which is imposed on the person under the authority of the state is a torture.

¹⁰⁷ S. Vardachariar, *Hindu judicial system*, 94(1946).

¹⁰⁸ Jadunath Sarkar, *Mughal Administration*, 92(3rd ed., 1952).

¹⁰⁹ Lord Curoz was viceroy of India during 1899.

¹¹⁰ *Supra* 31 at 48.

¹¹¹ The Police Act, 1861, available at,

http://www.humanrightsinitiative.org/publications/police/police_act_1861.pdf, last seen on 29/3/17.

¹¹² The Torture commission of India, 1884.

- The Indian police commission¹¹³, was instituted to consider the defects in the police administration.

3.3 Powers and Functions of the Police¹¹⁴

The main function of the police is to establish peace in the society; they protect the society from internal aggression. If there is any danger to society from any person, they can arrest that person to commit further crime. Police keeps the records of such arrests, collect evidences regarding commission of the crime, and produce the person to the Magistrate. From registering of an FIR to till conviction, Police plays a very important role. To perform their functions, Police is facilitated by powers under Criminal Code. The cases of misusing of these powers have been registered against the police.

3.2.1 Functions of the Police

Justice Hidayatullah in his one judgment conceptualizes on internal security and formulates three important points: 1. State security is the heart of the problem. 2. Public order 3. Law and order. These are the function of the police to maintain, preserve, and protect internal security¹¹⁵. In another important judgment of *Arun Gosh v. West Bangal*¹¹⁶, the learned judge identifies that: 1. The probability of occurrence of disturbance, 2. The potentiality of damage, likely to be caused by this disturbance, 3. The effective level of the disturbance as a breach of peace and security in all three areas: law and order, public order and state security, 4. The recurring nature of the disturbance phenomenon. So, it is essential to have a strong Police administration, which will protect the internal security. Following are the functions of the police given under Criminal Procedure code: -

- *Preventive functions*: the most important work is arrest of lawbreaker and put them behind the bars. It protects the society from such offender.

¹¹³ The Indian Police Commission (1902-03) available at , <http://www.police.pondicherry.gov.in/Police%20Commission%20reports/THE%20INDIAN%20POLICE%20COMMISSION%201902-03.pdf>, last seen on 30/3/17.

¹¹⁴ R.C.Dikshit, *Police: The human Face* , 34-35 (2000).

¹¹⁵ P.D.Sharma, *Police internal security and development disorder in India*, 1-49(1988).

¹¹⁶ *Arun Gosh v. West Bangal* AIR 1970, SC 1228.

- *First Information Report*: the first step of the police investigation is to register an FIR in cognizable offence. It is recorded in four copies, the original sheet is remaining with the police and carbon copy is handed over to the informant free of cost. Police starts investigation immediately after recording the FIR.¹¹⁷ If police refuses to register an FIR, person can directly move to SP or Judicial Magistrate.¹¹⁸
- *Conditional Release of Accused on Bond etc*; in case there is no sufficient evidence to prove the fact that such person to whom they arrested, they will release him on bond; it can be with sureties or without.¹¹⁹
- *Investigation by Police*; investigation is the vital role of the police. The purpose of investigation is to collect evidences. Section 25¹²⁰ and 26¹²¹ of the Evidence Act states that during investigation police is not authorize to inflict torture on a person to extract information. Law also permits that any confession made by the accused to the police will not be considered as evidence against the accused.
- *Interrogation of Offenders & Suspects*; police has the power to interrogate the questions but it should be free from any kind of pressure. Section 156 of Criminal procedure impose certain limitations while interrogation of the suspect.
- *Search and Seizure*; Section 94¹²² to 104¹²³ of Cr.P.C states that search and seizure is the important part of the investigation to collect the evidences which is important in the trial. It should be free from any pressure and must be fair and reasonable.
- *To Assist the Prosecutor*; Police also assist the prosecutor to conduct the case in the court of Law.
- *Identification*; there is a special branch which keeps records of finger prints, photographs and other records which is important for the identification of the criminal

¹¹⁷ Shiv Bahadur Singh v. State of Madhya Pradesh (1954) Cr.L.J. 921.

¹¹⁸ S. 154, The Criminal Procedure Code, 1973.

¹¹⁹ S.170, The Criminal Procedure Code, 1973.

¹²⁰S.24, The Evidence act, 1872: confession to police officer not to be proved.

¹²¹ S.26, The Evidence act, 1872: confession by accused while in custody of police not to be proved against him.

¹²² S.94, The Criminal Procedure Code, 1973: Summons to produce document or other thing: Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

¹²³ S. 104, The Criminal Procedure Code, 1973.

3.2.2 Investigating Power of the Police

Once the FIR is registered the police will lead to the investigation of the case. The foremost step is to arrest the suspect which leads the suspect into the custody. The Arrest takes the personal liberty of a person and he is fully under the control of the Police. The arrest may be legal or illegal, formal or informal, it can be by word or action. When a person is arrested in accordance to the manner prescribed in Criminal Procedure Code, it is direct police custody. If the arrest is done with the purpose of harassment and without any legal formality, it is informal and illegal arrest.

In, *H. N. Rishbud and Inder Singh v The State of Delhi*¹²⁴, The court held that out of all above, the most important work of police is to do investigation whenever any case is registered. Investigation consists generally of the following steps: Proceeding to the spot, Investigate the facts and circumstances of the case, Discovery and arrest of the suspected offender, Collection of evidence relating to the commission of the offence which may consist of (a) The examination of the various person and keep a record of their statement (b) To search the place and seize things which are necessary for the investigation of the case and to produce them during trial of the case. Police official who has collected the material will form an opinion whether to place an accused before the magistrate and form a charge sheet under section 173¹²⁵ of Criminal Procedure Code. Investigation is very important for the delivery of justice, so it should be done without any political influence and should be free from any bias factor.

There are two aspects with regard to police investigation, which are of prime importance. First, the investigation has to be adequate, carrying the confidence of the complaint about its fairness. Second, it has to be reasonably expeditious.¹²⁶ It was held in *Prabhu v. Emperor*¹²⁷ and *Lumbhardar Zutshi v. The King*¹²⁸; that there can be no doubt that the result of the trial which follows investigation must be as per the law but there is illegality in the investigation; it can be exposed to have brought about a miscarriage of justice.

¹²⁴H. N. Rishbud and Inder Singh v. The State of Delhi, 14 December, 1954.

¹²⁵ S.173, The Criminal Procedure Code 1973 : Report of police officer on completion of investigation.

¹²⁶ Trilok Nath, *The Police Problem*, 48(1983).

¹²⁷Prabhu v. Emperor, A.I.R. 1944 P.C. 73. 149 .

¹²⁸ Lumbhardar Zutshi v. The King, A.I.R. 1950 P C. 26.

- ***Power to investigate a cognizable case on information***¹²⁹: When a police officer receives information on a cognizable offence¹³⁰, he has a power to investigate the case. Any information relating to the commission of a cognizable offence, given to officer in charge of police station, either orally, reduced in writing or must be signed by the person who is giving it and shall be enter in the book. A copy of the information shall be given to the person free of cost. If officer-in-charge of police station refuse to register the report of the case, the person can post such information to the Superintendent of Police. A police officer has power to prevent any cognizable offence which he thinks according to his ability can occur.¹³¹
- ***Power to investigate a non-cognizable offence on information and investigate thereof***¹³²: when information is given to officer-in-charge of police regarding the non-cognizable offence within his jurisdiction, police officer has no power to investigate the offence without information to Magistrate having power to try this case. If the case is related to two or more offence and one of them is non-cognizable, the case shall be considered as cognizable.
- ***Power to investigate cognizable offence***¹³³: In non-cognizable¹³⁴ Police is not authorized to arrest a person without a warrant; such cases are investigating by police over the local area and within the limit of such station without the order of Magistrate. He/she shall not be question on the ground that he was not empowered to deal with.
- ***Procedure for Investigation***¹³⁵: when police officer is empowered under section 156 and he has reason to believe about the commission of the offence, he shall send a report to Magistrate to take cognizance of the case upon a police report. Magistrate may appoint any such person of any rank as prescribed under the state government to investigate the

¹²⁹ S. 154, The Criminal Procedure Code, 1973.

¹³⁰ S.2(c), The Criminal Procedure, 1973: defines cognizable offence as an offence, in which a police officer can arrest a person without a warrant. In practice, cognizable offences are offences in which a police officer can register a case and start an investigation without a magistrates order and carry out an arrest without a magistrate warrant. Cognizable offences are mentioned in the First Schedule of CrPC .

¹³¹ S. 149, The Criminal Procedure Code, 1973: police to prevent cognizable offence.

¹³² S.155, The Criminal Procedure Code, 1973.

¹³³ S.156, The Criminal Procedure Code, 1973.

¹³⁴ S.2(1), The Code of Criminal Procedure, 1973 :Non-cognizable offences are mentioned in the First Schedule of the [CrPC]. Section 2 (1) CrPC defines non-cognizable offence as an offence, in which a police officer has no authority to arrest without a warrant. In practice, non-cognizable offences are offences in which police cannot register a case without a Magistrates order or carry out an arrest without a Magistrate warrant.

¹³⁵ S.157, The Criminal Procedure Code, 1973.

case for arrest of the offender. But if it is appearing to appointed office that crime is not of nature and he does not find any ground to investigate. He shall not investigate. Every Report to Magistrate must be submitted through superior officer of the police.¹³⁶ On receiving such report, Magistrate may direct subordinate to investigate or to proceed, conduct, hold, dispose of the inquiry¹³⁷.

- ***Power to require the attendance of witness***¹³⁸: while making an investigation, it requires the attendance of the witnesses before himself or any person within his limit or any adjoining station. All the witnesses will be paid by the police officers for the travel expenses. If information given by witness is duly proved during trail, he can be used by the accused with the permission of the court. Person can be re-examined in the court under section 145¹³⁹ of the Evidence act with the purpose to explain the matter in detail.¹⁴⁰
- ***Recording of Confession***: Police officer cannot make inducement, threat or promise as mentioned in section 24¹⁴¹ of the Evidence act. If any person is making any statement with his free will, police officer cannot stop him/her to do so¹⁴². Confession made during the investigation must be recorded by the Magistrate only and such confession can be used as evidence against him. Before taking any confession, Magistrate makes him aware that he/she is not bound to give such confession. If during confession, person is not willing to make confession, Magistrate shall not authorize the detention of that person in the police custody. Confession made by the person will be signed by him and by Magistrate, he also has a power to administer oath of the person who made such confession¹⁴³.

¹³⁶ S.158, The Criminal Procedure Code, 1973.

¹³⁷ S.159, The Criminal Procedure Code, 1973.

¹³⁸ S.160, The Criminal Procedure Code, 1973.

¹³⁹ S.145, The Evidence Act, 1872:Cross-Examination to Previous Statement in writing.

¹⁴⁰ S. 162, The Criminal Procedure Code 1973: provided that when any witness is called for the prosecution in such inquiry or trail whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused.

¹⁴¹ S.25, evidence Act, 1872: Confession to police officer not to be proved: no confession made to a police officer, shall be proved as against a person accused of any offence.

¹⁴² S.163, The Criminal Procedure Code, 1973.

¹⁴³ S.164, The Criminal Procedure Code, 1973 .

- ***Investigation when not completed within 24 hours¹⁴⁴***: If it appears to the police officer that investigation cannot be complete within 24 hours then he will send a copy of entry relating to the case and also forward the accused to magistrate. The custody shall not exceed to 15 days in whole when accused is forwarded to the judicial custody. In case the accused is send to the magistrate who has no jurisdiction, he can send this custody to the concerned magistrate. Magistrate shall not authorize the detention of accused in any custody until he is not produced before him, signature of the person is also taken as a proof that he was produced to the Magistrate.

Provided that the custody may exceed till 90 days, when the offence of investigation is punishable with death or life imprisonment or where imprisonment is not less than 10 years; it may exceed to 60 days, where the investigation is related to other offences. After the expiry of the 90/60 days, a person shall be released on bail as per the provision of Chapter xxxiii. Accused shall be in custody only if he cannot furnish bail. In case the investigation is not included in 6 months, court can order to stop the investigation unless the officer making his investigation not satisfies the Magistrate for the reason of such long time and reason for the continuation beyond 6 months is necessary.

Section 57 and 167 of the have to be read as supplementary to each other, These sections intended to prevent the possible abuse by the police of their powers and also to provide for expeditious investigation and to enable the person arrested to be released on bail, if the investigation cannot be completed with the period specified in section 167 of CrPC.¹⁴⁵

In case Magistrate not convinced, he can order to stop the application be made to the Session court and direct that further investigation can be done only when there is directions with regard. In case judicial magistrate is not available, the officer in charge of police station will transmit the same to the nearest executive magistrate who has the same powers. The copy of the entry in the dairy and the accused shall be forwarded to the Executive magistrate, the reason to be recorded in writing. The custody may not exceed more than seven days and the accused can be release on the bail. Before the expiry of the period, the Magistrate shall transmit the record to the nearest Judicial Magistrate.

¹⁴⁴ S. 167, The Criminal Procedure Code, 1973.

¹⁴⁵ Public Prosecutor v. Satya Narayan, 886 Cr. L.j 1134.

Release the accused on bond: when it appears to officer-in-charge of police station that there is not sufficient ground to forward the person to the Magistrate. He can release that person on executing bond with or without sureties.

3.2.3 Duties and obligations of police officers

Police is the integral part of the criminal administration system, it protects the law and order in the society and duty bound to prevent the crime. Criminal Procedure code provides the strength to Police by giving those powers as enshrined under criminal code.

- The person arrested shall not be subject to more restrain than is necessary to prevent his escape.¹⁴⁶
- Police officer will communicate the person the reason of his arrest, if he is arrested without warrant other than a person accused of non- bailable offence, that he is entitled to be released on bail.¹⁴⁷
- The officer may take offensive weapons from the arrested person and such can be delivering to the Magistrate.¹⁴⁸
- When a person is arrested for any such offense where it is reasonable to believe that the examination of such person is necessary to afford evidence for the commission the offence, he must be get checked by the registered medical practitioner.¹⁴⁹ In case of female, she must be examined by female registered medical practitioner. Even it at any time during the period of his detention in custody, it appears that medical examination of such can afford evidence, it must be get done. Bring the arrested person before magistrate: when a person is arrested without warrant, that person must produce to the magistrate or officer-in-charge of police station without delay¹⁵⁰.
- Arrested person must be produce to the magistrate within 24 hours of the arrest; he cannot be kept in custody more than 24 hours without the order of the Magistrate under section 167¹⁵¹.

¹⁴⁶ S. 49, The Criminal Procedure Code, 1973.

¹⁴⁷ S.50, The Criminal Procedure Code, 1973.

¹⁴⁸ S. 52, The Criminal Procedure Code, 1973.

¹⁴⁹ Ss.53 & 54, The Criminal Procedure Code, 1973.

¹⁵⁰ S. 56, The Criminal Procedure Code, 1973.

¹⁵¹ S. 57, The Criminal Procedure Code, 1973.

- The police officer shall report to the Magistrate all the cases of arrested person without warrant in their respective stations¹⁵².
- No person who has been arrested can be discharged without bond, bail or under order of the Magistrate.
- If any person is escaped from the lawful custody may immediately pursue and arrest him in anyplace in India.¹⁵³

The Object of the powers given to police is to perform all the functions properly and to facilitate these functions, powers has been given. But police should not exceed its authority while performing such powers. It is important to have such powers to deal with hard core criminal to protect the society. While performing these duties and using these powers, police have to take care the rights of the accused.

3.2.4 Misuse of powers by the Police: Police brutality

Supreme court of India has dealt with highly shocking incident of torture in police custody. One person was arrested by police who died after 6 hours of his arrest and court held two constables and one police officer for culpable homicide not amounting to murder.¹⁵⁴ Taking note on this Supreme Court judgment, law commission of India decided to take up the subject and examine whether there is need to reform the law on this subject, 113th law commission Reports on Injuries in Police Custody¹⁵⁵ states that incident of torture in police custody is the abuse of official position and it is a matter of serious consideration. Law commission recommended inserting new section 114B to the Indian evidence act, 1872 which will make police official responsible for the crime in the custody. But, if he misuse his powers it can leads to disturbance in the administration of the criminal justice in the society. There is need to insert suitable provision as addressed by the Supreme Court to stop and keep eye on such activities. Though, There are number of cases has been registered regarding the police brutality while misusing their power. Like:

¹⁵² S. 58, The Criminal Procedure Code, 1973.

¹⁵³ S. 60, The Criminal Procedure Code, 1973.

¹⁵⁴ State of U.P. v. Ram Singh Yadav, (Criminal Appeal no.69 of 1975, decided 22nd January, 1985)

¹⁵⁵ 113th The law commission Reports, *Injuries in Police Custody*, Available at, <http://lawcommissionofindia.nic.in/101-169/Report113.pdf>, last seen on 4/4/17.

- **Rape in the custody:** Mathura Rape Case¹⁵⁶ is the case where girl was raped by the two constables when she went to register an FIR. Police constables took a plea that it was with the consent of the girl but court held that consent of the girl was not free consent they forced her to do. This case leads to amendment in the Criminal Procedure code related to rape laws.¹⁵⁷
- **Corruption in the police:** corruption in public life started in a bid way during the 'Pathan' and 'Mughal' rule in the country, the sphere of authority of these rulers covered nearly the entire sub-continent.¹⁵⁸ Many times the corruption in the police system led to the miscarriage of justice. In *Gauri Shanker Sharma v state of U.P.*¹⁵⁹ a person given two thousand rupees to the Police to give third degree torture to the suspect.
- **Police Brutality:** *Khatri Singh v State of Bihar*¹⁶⁰, is the most brutal case where the eyes of accused were plucked which made him blind. This was the most inhuman act by the police official against the accused. In *Raghubir Singh v Haryana*¹⁶¹ the sub-inspector of the police arrested the person on the suspect of theft. Due to severe beating by the petitioner, it resulted into the death of the person in the police custody. Medical examination report revealed that death happened because of asphyxiation. The session court and high court rejected his plea that suspect died because of suicide. Sub-inspector was charged with imprisonment of life. His petition was dismissed. The court observed that a scar given by police torture shows the shameful act of the guardian of the society. It infringes the human rights and also causes danger to the live and freedom of a person.
- **Police custody and Death:** Death in the custody is the worst kind of crimes in a civilized society. In *D.K Basu v State of West Bengal*, it was held that Custodial violence includes torture and deaths in lockups. Torture hits a blow at the rule of law which demands that "the powers of the executive should not only be derived from law but, also that the same

¹⁵⁶ Tuka Ram and Anr. v. State Of Maharashtra, 15 September, 1978.

¹⁵⁷ The Criminal Law (Second Amendment) Act 1983 (No. 46) made a statutory provision in the face of Section 114 (A) of the Evidence Act made 25 December 1983, which states that if the victim says that she did not consent to the sexual intercourse, the Court shall presume that she did not consent as a rebuttable presumption. The Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment and addition of Section 376(A), Section 376(B), Section 376(C), Section 376(D), which made custodial rape punishable.

¹⁵⁸ Trilok Nath, *The Police Problem*, 94 (1983).

¹⁵⁹ *Gauri Shanker Sharma v. state of U.P.*, AIR 1990 SC 709.

¹⁶⁰ *Khatri Singh v. State of Bihar*, AIR 1981 SC 928.

¹⁶¹ *Raghubir Singh v. Haryana*, AIR 1980 SC 1087.

should be limited by law”¹⁶². If a person is kept in jail for the execution of death; he cannot be kept in solitary confinement. It will amount to imposing punishment for the same offence twice.¹⁶³

- ***Difficulty in proving the custodial torture:*** At the commission of an offence, there is only preparatory and victim available, no third person is there to give testimony about the torture. Even if the victim is tortured, he will not speak because of the fear of authority.¹⁶⁴ It is very difficult to prove the case of custodial torture. So, it is very important to install CCTV cameras in every police station to keep a check on the police. It will make them accountable. The presence of advocate during interrogation of the accused will also prevent the custodial torture.

It is very important to maintain Police equilibrium between effective investigations or collecting of evidence meanwhile human rights of the person must not be violated. Merely to conduct effective investigation, it is not a license to conduct barbaric and inhuman act to the accused while he is in custody. In *Inder Singh v State of Punjab*¹⁶⁵, it was a case of human rights violation and police atrocities. Seven people were abducted by the police ranging in age from 85 to 14 years and the state police acted in a leisurely and irresponsible manner. Supreme Court directed the case to CBI to make an enquiry to decide the question of payment of compensation by the respondents to the next kins of the seven people.

3.3 National Crime Record Bureau Report on Police Custody

Constitution of India protects the dignity of the individual from torture though it can be noticed from the statistics that it is still prevailing in our country. NCRB Report data shows the number of deaths occurred in police custody. Deaths in police custody can be divided into two parts; firstly, when the person was in police custody but remanded by judicial magistrate in 2013 there were 21 deaths, 32 deaths in 2014, 30 deaths in 2015¹⁶⁶ secondly, when a person is in police custody not remanded by court then according to report of 2016, there were 97 deaths in 2013, 61 in 2014, and 67 in 2015. 97 died in 2015

¹⁶² D.K Basu v. State of West Bengal, AIR 1963 SC 1295.

¹⁶³ Inderjeet v. State of Uttar Pradesh, AIR 1975 SC 1867.

¹⁶⁴ 152nd The Law Commission Report (1994), Custodial Crimes, Para 2.8,

¹⁶⁵ Inder Singh v. State of Punjab, 1994(6) SCC 275.

¹⁶⁶ *Custodial Crimes*, 147(2016), available at, <file:///C:/Users/HP/Desktop/my%20work/statics/Chapter%2013-15.11.16.pdf>, last seen on 4/04/17.

for different reason of deaths in custody¹⁶⁷. This is the obvious contravention to human right of the person who is in custody. There are 51 deaths of female in total in India.¹⁶⁸

3.4 Accountability of the police for Custodial Torture

The major problem of custodial torture is that, there is no evidence available against perpetrator of crime. At the time of commission of crime in custody only perpetrator and victim are there. Most of case of custodial torture goes un-noticed because of lack of evidences. So it is very important to make police accountable; many commissions and committees recommended making it answerable to higher authority¹⁶⁹. Section 29 of the police act; punish the police officer for three months imprisonment to cause torture to any person in custody.¹⁷⁰ In case of death of person encounter, NHRC has issued guidelines which must be following in case there is death, so that fake encounter can also be traced. Within forty eight hour, the report of such encounter must be furnished to the Superintend of the police and within three months all the information on whether such action was justifiable or according to law.¹⁷¹ In very recent case of 2016, where police were held accountable for their abuse of their powers, In January, four policemen in Mumbai were sentenced to seven years imprisonment for their role in the death of a 20-year-old man in police custody. In April, 47 policemen were sentenced to life in prison for involvement in the killing of 11 Sikhs in 1991 in the Pilibhit district of Uttar Pradesh state.¹⁷²

¹⁶⁷ Ibid 148 :A total of 34 out of 97 deaths in police custody were due to suicides committed by detained persons followed by 12 deaths during hospitalization, 11 deaths due to illness, 9 natural deaths, 6 deaths each due to injuries sustained during the police custody in allied assault by police & injuries sustained prior to police custody, 5 deaths while escaping from police custody, 3 deaths due to assault by other criminals and 1 death each due to mob attacks & road accidents/journey connected to investigation.

¹⁶⁸ *Deaths of Female Inmates in Prisons during 2015*, Table 9.2 State/UT-wise Incidence, available at, file:///C:/Users/HP/Desktop/my%20work/statics/Incidence%20of%20Deaths%20of%20Female%20Inmates%20in%20Prisons%20during%202015.pdf, last seen on 5/04/17.

¹⁶⁹ 8th Report of national Police Commission, available at, http://www.humanrightsinitiative.org/publications/police/npc_recommendations.pdf, last seen on 7/04/17.

¹⁷⁰ S.29, The police act 1861.

¹⁷¹ NHRC guidelines, *Procedure to be followed in case of death in police encounter* (2010), <http://nhrc.nic.in/documents/Death%20During%20the%20course%20of%20Police%20Action.pdf>, last seen on 4/04/17.

¹⁷² *World Report 2017*, p. 313, file:///C:/Users/HP/Desktop/my%20work/word%20report%202017%20%20india%20at%20313%20page.pdf, also available at <https://scroll.in/article/824686/how-four-policemen-in-mumbai-were-convicted-for-torturing-and-killing-a-man>, last seen on 9/4/17.

- *Install CCTV cameras:* CCTV is the best watchdog at everyplace, which is safe and secure. It must be install in all police stations, to record and keep watch on the deeds of police. It will reduce the chances of harassment and torture in the custody. There must be internet connectivity in police stations, court, hospital through the state wide area network, which will make easy to connect with other agency easily.¹⁷³
- *Police Complaint Authority:* this authority will listen all the reports from the public regarding complaints of torture, false implication of a person in any case, and detention, it will be headed by the district session judge.
- *Supervise visit of higher authorities:* to keep on check the brutal activates of the police, the surprise visit must be conduct by higher authorities.

This is the one side of the coin, that police has un-limited powers and many cases of torture has been reported of custodial torture in every state of India. There is a conflict between the rights of accused and the powers of the police.

¹⁷³ Report, *Committee on Draft national policy on criminal justice*, Para 10.5.3, 59(2007). available at, http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/DraftPolicyPaperAug.pdf, last seen on 12/4/17.

Chapter 4

International framework to combat custodial Torture & protect Human Rights

“To strike the balance between the need of law enforcement on one hand and the protection of the citizen from oppression and injuries at the hand of law enforcement machinery on other is a persistent problem of statecraft”

Lewis Mayers

Human Rights are as old as history of human civilizations.¹⁷⁴ They are the moral principles or norms which describe certain standards of human behaviour, and are regularly protected as legal rights in municipal and international law. They are commonly understood as inalienable fundamental rights "to which a person is inherently entitled simply because she or he is a human being". Human rights are important for full improvement of human personality and happiness.¹⁷⁵ Human rights are also called fundamental rights, basic rights or natural rights. They cannot be taken away by any legislation or by any government. These are available and common to every person on this planet.¹⁷⁶ Human rights can be classified into following rights and the unique feature of these rights is that these are available to every man naturally by his birth.¹⁷⁷ Civil Rights, Political Rights, Social Rights, Economical Rights, Cultural Rights are the basic human rights.

Human rights are a universal phenomenon. There is no monopoly of any culture or any geographical region. Human rights are indeed available in all parts of the world.¹⁷⁸ Human rights do not compose a mere list of certain basic rights, which every individual can enjoy. The concept is growing day by day and it not only comprises traditional civil and political rights but also economic, social and cultural rights. To extend the scope of the human rights, so many issues related to human rights have been involved like right to

¹⁷⁴ P.L.Mehta(1992) Neeha Verma, *Human Rights under the Indian Constitution*,14(1999).

¹⁷⁵ Jack Donnely, *Universal Human Rights in Theory and Practice*, 41(3rd ed.1989).

¹⁷⁶ J.E.S. Fawcett, *The law of Nations*, London Penguin, 151(1968).

¹⁷⁷ E.S. Venkata Ramiah, *Human Rights in a changing world*, 104(1988).

¹⁷⁸ Jan Martenson, Under Secretary General of Human Rights and Director General of the United Nations office at Geneva, in his key note address during the Third World Congress, convened at New Delhi from 10-15 December 1990.

development, right to peace and right to clean environment must be added.¹⁷⁹ The fight for the justice is not limited to individual only but to change the entire social system.¹⁸⁰ The origin of the legal concept of human rights: MAGNA CARTA (1215): it was peace document signed by the John Lackland, king of England on 15 June, 1215. It was a request to the king which was in the form of opinion to make certain rights for the certain group of people. Article 39 of the instrument is saying that no free man shall be detained, imprisoned, expel in anyway, he will not be send to anyplace against his will except by the judgment or by the law of the land.¹⁸¹ Habeas Corpus Act of 1640 was passed by the Parliament of the England by the 1st Earl of Strafford in 1641. This act states that whosoever is detained and imprisoned arbitrary or by unlawful detention will be release immediately.¹⁸²In 1776, United States declaration of independent used the term Human Rights first time. In 1789, French revolution gives the birth to the rights of men.

4.1 Growth and Evaluation of Human rights in India

The concept of human rights in India may be seen to have existed in crystallizations of values that are the common heritage of mankind.¹⁸³ About 5000 years ago, ancient Indian philosophers and thinkers explained a theory of higher moral law over and above positive law represent certain values of universal validity like righteousness, wealth, desire and salvation, with a view to maintain social harmony among between inner and outer, spiritual and material aspect of life.¹⁸⁴The root of the concern for human rights in Vedic age may be traced in religious, humanitarian traditions and the unceasing struggle for freedom and equality. Since rights flow from a divine source, they are inalienable by moral authority.¹⁸⁵

4.1.1 Human Rights in ancient India

‘Kautilya’ the author of the celebrated political treaties, ‘*Arthashastra*’, not only affirmed and elaborated the civil and legal rights first formulated by ‘*Manu*’ but also added a

¹⁷⁹ K.S. Saksena , *Human Rights- Perspective and Challenge*, 474(1st ed.1994).

¹⁸⁰ V.R. Krishna Iyer, *Human Rights and Inhuman wrongs*, 7(1990).

¹⁸¹ W.S.Carpenter, *Foundation of Modern Jurisprudence*, The Journal of Politics 21,72(Feb.1958-59).

¹⁸² S. Subramanian, *Human Rights and Police*, 17(1998).

¹⁸³ Subhash C. Kashyap, *Human rights and parliament*, 25(1972).

¹⁸⁴ Prof.S.N.Dhyani ,*Fundamentals of Jurisprudence*, 637-710(2nd ed.2015)

¹⁸⁵ Dr. Paramjit Singh Jaswal and Dr Nishtha Jaswal, *Human Rights and Law*, 3-4(1995).

number of economic rights.¹⁸⁶ After that, 'Budhha' and 'Ashoka' protected secured human rights particularly right to equality, fraternity, liberty and happiness¹⁸⁷ they successfully established a welfare state and made provisions for securing freedom like freedom from hunger,¹⁸⁸ torture and inhuman treatment of prisoners were prohibited under *Ashoka's* administration. *Ashoka* laments that some servants of the state, failing to realize his personal sentiments, had at times gone so far as to inflict unjust imprisonment or torture.¹⁸⁹

4.1.2 Growth of Human Rights in the Islamic Era

With the invasion of India by Muslim, new situation was created, wherein the *Muslim* rulers followed a policy of discrimination against the *Hindus*.¹⁹⁰ The operational ramifications of the Islamic norms can be gleaned from the *Mughal* history of India.¹⁹¹ The *Mughal* rulers especially with Akbar a new era began in the history of Human Rights.¹⁹² He focused on the welfare state.

4.1.3 Human Rights in British India

When the British ruled India, resistance to foreign rule was manifested in the form of demand for fundamental freedoms and civil and political rights for the people.¹⁹³ British resorted to arbitrary acts such as brutal assaults on unarmed *satyagrahis*, confinements, exiles etc. The freedom movements and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and the demand for constitutional guarantee of some fundamental rights.¹⁹⁴ Chartered Act of 1813 was enacted with a view to promote the interest and happiness of the Indians as it was highly rejected by the Britishers. There was a different law for the Indians and the Britishers, similarly government of India Act, 1833, was passed to allow the Indians to enjoy some political

¹⁸⁶ Dr.S.Subramanian, *Human rights: international challenge*, 57(1997).

¹⁸⁷ Supra 185 at 100.

¹⁸⁸ Ibid.

¹⁸⁹ Yogesh K. Tyagi, *Third world Response to Human Rights*, Vol.21,No.1,Jan-March,181, Indian Journal of International Law,121-22(Jan.-Mar.,1981).

¹⁹⁰ Supra 185, at 142-43.

¹⁹¹ Supra 190, at 123.

¹⁹² Ibid, at 183.

¹⁹³ Supra 187, at 122.

¹⁹⁴ Supra 82, at 58.

rights.¹⁹⁵ Next to the government of India Act, 1833, the proclamation of Queen Victoria on the 1st November, 1858, contained some principles of state policy which were similar to fundamental rights in nature. The government of India Act, 1915, demands for fundamental rights in public services regardless of race and religion. The constitution of Irish in 1921 included the list of fundamental rights which influence the Indian national congress.¹⁹⁶ So the Promulgation of the constitution by the people of India in January 1950 is watershed in the history of India. The preamble, fundamental rights and the directive principles of the state policy together provides the basic human rights for the people of India.¹⁹⁷

4.2 International Perspective on Human Rights and Prohibition of Custodial Torture

There are many Conventions that prohibit Custodial torture and value human rights. At international level, the importance of human right was discussed time to time. There are many conventions, protocol, conferences which have been signed and ratified by many nations. They emphasize on the importance of human rights and also emphasize the root cause of its violation in every field, here we will discuss the violations of human rights in the police custody, united nation convention on torture which prohibit such inhuman acts, it also welcomes all the nations to ratify, India signed it but didn't get ratified. These conventions secure the rights of the person who is under the control of third person. The war against torture has been started at national and international level. It is understood that torture in the custody is violating the self-esteem of the human being and it cannot be justified under any situation. Time to time, constant steps has been taken to abolish custodial torture.¹⁹⁸

4.2.1 Universal Declaration of Human Rights (UDHR)

On 10 December 1948, United Nation General Assembly announced the universal declaration of human rights and two international conventions were adopted in 1966 codifying the two sets of rights outlined in the universal declaration. These two

¹⁹⁵ Supra 27.

¹⁹⁶ Ibid

¹⁹⁷ P.L. Mehta(1992) Neeha Verma ,*Human Rights under the Indian Constitution*,24(1999).

¹⁹⁸ Ashirbani Dutte, *Custodial Torture: a shameless True behind the bars*, Cri LJ(Journal), 242(2006).

international covenants, together with the universal declaration and the optional Protocols, comprise the international bill of Human Rights. It sets a milestone in the history of human rights. There are two conventions; International covenant on civil and political rights, International covenant on economic, social and culture rights. Three optional protocols were also adopted i.e.; Optional protocol to the international covenant on civil and political rights (came into force on March 23, 1976), Optional protocol on civil and political rights aiming at the abolition of death Penalty in 1989 (came into force on July 11, 1991), Optional protocol to the international covenant on economic, social and culture rights in 2008 (came into force on May 5).

UDHR respect Human Right and every member state has to respect human rights and incorporate the provision of human right protect in their respective laws. Charter of the united nation is binding on all the states and it make obligation on all the states to respect human rights and freedom. All the member states will make domestic law to protect and respect human rights¹⁹⁹and everyone shall be protected by the law without any discrimination. Article 3 of UDHR states that everyone has a right to life, liberty, and security of a person and No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment as given under article 5 and who is charged with the criminal charges will be considering innocent until he is not proved guilty the law²⁰⁰. Everyone has a right to an effective remedy by the competent national tribunals for violation of the fundamental rights as granted by the constitution of the country.²⁰¹ No one shall be subject to arbitrary arrest, detention or exile.²⁰² No one shall be held guilty for any penal offence on account of any act or omission, which did not constitute any penal offence.²⁰³

4.2.2 The international Covenant on civil and Political Rights, 1966 (ICCPR); On 16 December 1966, United Nation general assembly adopted this documents which ensure that any person whose rights have been violated have remedy available, remedy for such violation will be decided by the competent court, tribunal or by legislative authority.

¹⁹⁹ H. Leuterpacht, *International Law and Human Rights*, 4 (1968).

²⁰⁰ Art. 11, Universal Declaration of Human Rights, 1948.

²⁰¹ Art. 8, Universal Declaration of Human Rights, 1948.

²⁰² Art. 9, Universal Declaration of Human Rights, 1948.

²⁰³ Art. 7, Universal Declaration of Human Rights, 1948.

Article 3 of ICCPR ensures right to life, liberty, and security of persons and Article 5 prohibits any torture, inhuman or degrading treatment or punishment. Everyone has a freedom from arbitrary arrest, detention or exile,²⁰⁴ if arrest is made he will be presumed innocent until proved guilty in a public trial with all guarantees necessary for defense in criminal cases.²⁰⁵

4.2.3 Geneva Conventions in 1949: Geneva conventions played a major role to protect the world from wars and to maintain peace. There are four conventions and three optional protocols which punish war crimes and protect human rights of the civilians. Article 3 of the all four conventions states that the person who is not taking part in the hostilities, and the person who is wounded, sick and who has surrendered himself will not be amount to torture and he will not be discriminated on the basis of race, color, sex, religion. He will be treated humanely.

4.2.4 Convention against Torture and other cruel, inhuman or Degrading Treatment or Punishment, 1975²⁰⁶

The convention on the torture was adopted on 9th December, 1975. After this convention, General Assembly requested the human rights commission to study and observe the torture more deeply to ensure the effective observance of the Torture Declaration. 10 December 1984 (resolution 39/46) General Assembly ensure such recommendations which prohibit the prevention of crime and the treatment of offender of Torture²⁰⁷. Convention has universal declaration; every state will prohibit torture and other similar acts and will ensure to make law which will criminalize such acts. Article 10: each state will educate to all public officials to respect the human rights of the arrested person, who take the custody, interrogation, and arrest. Article 11: every state must review the interrogation, arrest, investigation method and practices with a view to prevent any form of torture.²⁰⁸

²⁰⁴ Art. 9, The international Covenant on civil and Political Rights, 1966.

²⁰⁵ Art. 11, The international Covenant on civil and Political Rights, 1966.

²⁰⁶ United Nations General Assembly, Res. No.3452 (xxx) of 9 December 1975, available at, <http://www.un-documents.net/a30r3452.htm>, last visit on 14/4/17.

²⁰⁷ *Convention against torture and other cruel, inhuman or degrading treatment or punishment*, http://legal.un.org/avl/pdf/ha/catcidtp/catcidtp_e.pdf, last seen on 14/4/17.

²⁰⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987,

4.2.5 United Nations Standard Minimum rules for the treatment of Prisoners, 1977

On 30 August 1955, standard rules for the treatment of the prisoners were adopted by the United Nations Congress and later it was approved in 1977.²⁰⁹ Standard Minimum Rules provides that all prisoners have certain fundamental rights and they should be treated with due respect to their inherent dignity and value as human beings without discrimination of any kind. These rules represent the standard of Prison system where human dignity is respected. It also protects the imprisoned and arrested person. Rule 33: it states that using hand-cuffs, chains, irons and strait should not be used for the purpose of punishment, it is inhuman in nature.

4.2.6 Code of Conduct for law enforcement officials, 1979²¹⁰: On 17 December 1979, United Nations General Assembly adopted code of conduct which states that governmental official who discharge their duty to maintain law and order in the society, must respect human rights of the entire person. The term code is a set of rules, which is applicable on police officers while discharging their professional practice and Behavior. It is the first set of rules which is applicable universally. *Article 5* of the Code prohibits the torture or other cruel, inhuman or degrading punishments as mentioned in the convention of 1975 and it is the duty of every law officers to stop such violation and report the same to higher authority that will investigate the matter²¹¹.

In 1984 India, The code of conduct for police was made by the Chief Minister of all states. It ensures the police must perform their duty with faithful commitment and to protect the citizen and also to uphold the right guaranteed under the constitution of India.²¹²

Available at, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, last seen on, 13/4/17.

²⁰⁹ United Nations Standard Minimum rules for the treatment of Prisoners, 1977: The Rules were first adopted on 30 August 1955 by the United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva, and approved by the Economic and Social Council in resolutions of 31 July 1957 and 13 May 1977. The United Nations revised the Standard Minimum Rules for the Treatment of Prisoners on 17 December 2015 after a five-year revision process. They are known as the Nelson Mandela Rules in honor of the former South African President Nelson Mandela.

²¹⁰ United Nations General Assembly, Res. No.34/169 of (17 December 1979).

²¹¹ Art. 8, Code of Conduct for law enforcement officials, 1979.

²¹² Dr. Ashwani Kant Gautam, *Human Rights and Justice System*, 148(2011), Union ministry of home affairs letters No. VI-24021/97/84-GPA.1 dated 4-7-85 and 10-7-85 addressed to the chief secretaries of all the states/U.Ts. & heads of C.P.Os

4.2.7 The Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, 1988²¹³: United nation general assembly on 18 December adopted the principles called the body of principles for the protection of all people under any form of detention or imprisonment. It gives respect to human dignity and nothing is painful then taking the liberty of a person. So it is the duty of the law to protect and respect their existence which is not merely animal existence it must be live with respect.

- Principle 1 of the convention states that all the people shall be treated with dignity and in a humane manner, even if they are under any detention or imprisonment.
- Principle 2 further provides the ways in which the competent officials or authorized person can carry the arrest, detention or imprisonment of a person. And it must be according to the provision of the law.
- Principle 4: If human rights of a person is effecting under any form of detention, it must be checked and regulated by the judicial or other authority.
- Principle 5.1 and 5.2, to protect the women, children, aged, sick, pregnant women while they are in custody, it must be ensure that they should be not be discriminated.
- *Principle 6* Any form of torture, cruel or inhuman, degrading treatment or punishment is totally prohibited under all circumstances, no one can give justification of torture and it won't be accept at any case under any circumstance.
- *Principle 7.2*: If violation of these principles taken place it must be report to the superior authority.
- *Principle 10*: The person who is arrested must be informed about his arrest and the charges against him.
- *Principle 11.1*: He shall have right to defend himself. *11.2*: arrested person must be informed the reason of such detention. *11.3*: such arrest and detention must be reviewed by the appropriate government. *Principle 12*: Every information must be duly recorded and kept in the records: The reason of such arrest, Date and time of such arrest and also the place of detention and his appearance to the judicial magistrate or other competent

²¹³ United Nation General Assembly, Res. 43/173 (9 December 1988), available at, https://tavaana.org/sites/default/files/A_RES_43_173.pdf, last visit on 17/4/17.

authority, Full identity of the Government official, includes the name, designation who is taking the custody, Place of custody must be informed to the arrested person.

- *Principle 16.1*: transfer of the detained person from one place to another must be informed to that person and also to his family and friends, *16.2*: any detained person who is foreigner is entitled to receive such communication, according to international law.
- *Principle 20*: On the request of the person, he can also keep in the place which is near to his residence place.
- *Principle 21.1*: any person who is detained will not be subject to torture and he can also not compel to give any confession or to incriminate against himself, *Principle 21.2*: Violence, threats and other method which cause him pain, is prohibited.²¹⁴

4.2.8 Vienna Declaration and Programme of Action: (World Conference on human rights 1993): On 25 June 1993, Vienna Declaration and programme of action of the world conference was adopted which was adopted by 171 states. It works to strengthen the human rights and dignity all around the world. This conference ensured that there should be no practice of torture, and it urged to the states to take immediate and effective step to stop such evil and make their implementation agencies so fast to eradicate such from every corner of the world because it is danger to the human rights.

- **Part 2, Para 55**: torture is the worst form of atrocity, it insult the human dignity and cause a pain to the victim which almost finish the wish to continue with their lives.
- **Para 56**: This conference ensures that freedom from torture is the basic right which must be protected not only in the words also in the reality at every level, national or international. Or under all circumstances either it is war time or a normal time.
- **Para 57**: This conference also states that the entire member nation should eradicate this problem as soon as possible. Because continue uses of torture is danger to human rights and human dignity.

²¹⁴ *The Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment, 1988*, available at, http://www.tjssl.edu/slomansonb/10.3_DetentionImprisonment.pdf, last seen on 13/4/17.

- **Para 59:** This conference ensures that victim compensation must be awarded in case of torture is inflicted on the victim. Effective measures must be taken for their mental, physical and social rehabilitation.
- **Para 60:** if there is violation of human rights by torture it must be prosecuted according to the rule of law of the count. Declaration states that, to eradicate Torture should be first and foremost concern of the member nation and optional protocol against torture must be adopted.²¹⁵

4.2.9 Istanbul Protocol: On 9 August, 1999, it was submitted to the united nation high commission for human rights. This protocol is the first ever documents which described that what steps should be taken while dealing with the complaints of torture by the state, investigating agency, legal or medical expert who are dealing with investigation of the case. It sets the guidelines for the psychological, physical or legal investigation of the ill-treatment set by the Turkish Medical Association in 1996. It is not a binding document but it has been used by the court and investigation agencies while dealing with the cases of torture.

4.2.10 Convention against Torture- Optional protocol: 2002²¹⁶: On 18 December 2002, united nation general assembly adopted optional protocol. This optional protocol is supportive instrument to convention against torture. It has universal application. Under this protocol they established international sub-committee which will work for the prevention of the torture and state party will apply the same in their respective nation.²¹⁷

Work of sub-committee: it plays major role in the prevention of crime. Committee official always visit to those places where liberty of the people is detained under the state jurisdiction. It can also access to other information like where they are kept and what treatment they are getting. *Article 12:* sub-committee can visit to many places like; Police station, Hospitals, Immigrations detention center, Administrative detention center. The

²¹⁵Vienna Declaration and Programme of Action: (World Conference on human rights 1993), available at, <http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>, last seen on 13/4/17.

²¹⁶ *Convention against Torture- Optional protocol: 2002*, Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations, Res. A/RES/57/199 (22 June 2006), available at, https://treaties.un.org/doc/source/docs/A_RES_57_199-E.pdf, last see on 12/4/17.

²¹⁷ Frank Ledwidge, *The Optional Protocol to the Convention against Torture (OPCAT): A major step forward in the global prevention of torture*, (2006).

Optional Protocol to the Convention against Torture offers a constantly working national system of monitoring called National Preventive Mechanism (NPM) in addition to an efficient International Sub-Committee. No particular form of NPM is prescribed in the Optional Protocol to the Convention against Torture itself. However, some parameters are firmly stated. Every nation will established such National Preventive measure at the domestic level after the one year of rectification²¹⁸ and every state party shall guarantee the independence of the NPM.²¹⁹ It will equally give the consideration to the national institution working for the promotion and protecting of the human rights. NPM will grant with the minimum power so that it can perform its function well. It also gives recommendation to the relevant authorities working for the same concern about the better treatment or punishment of those who lost their liberty.²²⁰

Resolution adopted by the General Assembly on 19 December 2016, UNO shows its concern to protect the human rights in all the member nations in the administration of justice.

Follow-up to the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice and preparations for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

4.2.11 United Nation Organization Special reporter visits to India and finding on Custodial Torture

- At the international level, India shows its respect towards the protection of human rights. In 2001, Sir Nigel Rodley, who is also one of finding father of human rights appointed by United Nation as special reporter, made an observation about the human rights in India. There he came to know that guardian of human rights were subjected to torture and there are various form of torture like harassment, different acts of violence, cruel treatments

²¹⁸ Art. 17, Convention against Torture- Optional protocol, 2002.

²¹⁹ Art. 18, Convention against Torture- Optional protocol, 2002.

²²⁰ Art. 19, Convention against Torture- Optional protocol, 2002.

etc. He observed the cases of the police brutality where they beat the people with the wooden stick which cause injury and death to the victim.²²¹

- In 2012, UNO special reporter visited to India, he really appreciated all the steps taken for the protection of human rights of under-trials by the all the bodies of the government. Like the, guidelines given under *D.K. Basu v. State of West Bengal*²²² related to arrest of the person, guidelines given by the NHRC on the custodial deaths and rapes, 2005 amendment in criminal procedure code which ensure to conduct judicial inquiry in the case of custodial deaths. He really welcomed all the steps taken by India to curb the problem of inhuman act of custodial torture, but during his visit to different states, he found that, in practice, there is no practicality of these provisions²²³. He suggested India to ratify the treaties for torture which, immediately enact the anti-torture act, to give compensation to victim of torture.²²⁴

4.3 Monitoring the Prevention of Torture and Ensure Human Rights at National Level

Origin of National Human Rights Institution can be traced from three resolutions²²⁵ The Economic and Social Council Resolution 2/9 was the first such step. This resolution indicates the establishment of state information groups or local human rights committees to act as channels for promotes the work of the United Nations Commission on Human Rights.²²⁶ The second step was Economic and Social Council Resolution 772B (XXX). This resolution fleshed out an advisory role for national institutions focused on providing informed opinions on questions relating to human rights to Governments.²²⁷ The third

²²¹ *Commission on Human Rights*, resolution 2000/43, Special Rapporteur Sir Nigel Rodley, Para 503- 584, 105-115, Available at, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/106/82/PDF/G0110682.pdf?OpenElement>, last seen on 19/3/17.

²²² *D.K Basu v. State of west Bengal* ,AIR 1963 SC 1295.

²²³ *Extrajudicial summary or arbitrary executions*, (A/HRC/23/47/Add.1), Special Rapporteur Christof Heyns, Para 29-33,7(2012) available at, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/089/34/PDF/G1508934.pdf?OpenElement>,last seen on 19/3/17.

²²⁴ *Ibid*, recommendations no. 97, 99, 109, 108,111.

²²⁵ Dr.H.O.Aggarwal ,*Human Rights*,987(15th ed.2014).

²²⁶ UN Economic and Social Council, ECOSOC Res. 2/9(21 June 1946).

²²⁷ UN Economic and Social Council, ECOSOC Res.772B (xxx),available at, <https://unstats.un.org/unsd/statcom/48th-session/documents/2017-33-GAECOSOCDecisions-E.pdf>, last seen on 18/04/17.

step was the adoption in 1978 of the first set of international guidelines on national institutions.²²⁸

4.3.1 Paris Principle

In 1991, there was workshop to discuss the matter of human right institution and it is known as Paris principle. Later it was adopted by the united nation general assembly and become the very important instrument. This is an independent body which works for the protection and promotion of human rights at national level of member states. Chris Sidoti summarizes the main characteristics of NHRIs as; they are official but independent institutions. These are established by law, either through the constitution or through an Act of Parliament that guarantees their independence and defines their structure, functions and powers. Such institutions are resourced by the State out of the ordinary annual budget and have complete operational freedom, in relation to policy, program, priorities and activities, subject only to the law²²⁹. The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading treatment or punishment specifically requires its State parties to ‘give due consideration’ to the Paris Principles when designating National Preventive Mechanisms (NPMs).²³⁰

4.3.2 National Human right Commission in India

On 12 October 1993, National Human Right commission came into effect by the virtue of the protection of human rights act 1993. other states has also setup in their respective state such commission which protect the human rights and also deal with violation cases as well. Human rights means right which is related to life, liberty, equality and dignity of the individual it also guarantee by the constitution of India by way of fundamental as enshrined under part 3 of the constitution.²³¹ National Human Rights Commission is an independent body which has all power of civil court, it deals with the cases of human

²²⁸ UN General Assembly, *National institutions for the protection and promotion of human rights*, Res. A/Res/33/46, (14 December 1978).

²²⁹ Chris Sidoti, *The Importance of a National Human Rights Institution for Palestine*, available at: <http://www.ichr.ps/etemplate.php?id=9>, last seen on 15/4/17.

²³⁰ UN General Assembly, *The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Res.UN Doc. A/RES/57/199 (18 December 2002), entered into force on 22 June 2006. available at, https://treaties.un.org/doc/source/docs/A_RES_57_199-E.pdf, last seen on 19/04/17.

²³¹ *People’s Union for Civil Liberties v. Union of India*, (1997)3 SCC 433.

rights and its decision has a binding force. It deals with many cases concerning human rights issue likewise; protection of citizen from any discrimination, protection of human rights, hear and investigate complaints of human right violation cases, National human right institution etc²³².

There are many functions of the Human Right Commission²³³ likewise; to make inquires to the all complaints of the violation of human rights, take action for them, it can visit to any institution like jail, reformative and protection care for the juvenile, of the central or state government. It can give recommendation to the state and central government for the better working of such institution. It not only works for the protection of human rights but also works for the promotion of human rights through publication in all regional language so that it can be accessible to the all the people of the country it also conduct seminar, so that they can reach to each and everyone. It in encourages to all the NGO who work for the protection and promotion of human rights.

Human right commission: ²³⁴Commission has all the powers of civil court like summoning and enforcing the attendance of witnesses and examining them on oath, discovery and production of any document, receiving evidence on affidavits, requisitioning any public record or copy thereof from any Court or office, issuing commissions for the examination of witnesses of documents, having jurisdiction to try the same, who shall proceed to hear the case against the accused.²³⁵ 268 complaints were received by NHRC out of which 207 were disposed off.²³⁶

Guidelines/Instructions Issued by the NHRC on Custodial Deaths

The NHRC India has adopted two novel strategies to battle torture:

(1) In case of custodial death and rape, all state government and union territory will send reports to the national human rights commission within 24 hours. if there is failure on the

²³² Dr.B.N. Mani Tripathi, *Jurisprudence*, 482(18th edition, reprint 2010).

²³³ S.12, of the Protection of Human Rights Act, 1993.

²³⁴ S.13,of the Protection of Human Rights Act, 1993.

²³⁵ S.13(4), of the Protection of Human Rights Act, 1993.

²³⁶ *Number of complaints received from NHRC & SHRC and their disposal during 2011*, available at, file:///C:/Users/HP/Desktop/my%20work/statics/Number%20of%20complaints%20received%20from%20NHRC%20&%20SHRC.pdf, last seen on 10/4/17.

part of the government to send such report within prescribed time, it will be consider that they had suppress the knowledge of the incident.²³⁷

(2) In case of post-mortem examination, the report of the doctor must be free from any pressure. There should be no gap between the writing of the report and the post-mortem examination. The chairperson of the commission wrote to the chief minister of all the states that in case of death in the custody or the case of rape it must be video-filmed and it cassettes must be send to the commission.²³⁸

4.3.3 Human Rights Courts: Protection of Human Rights Act, 1993, has distinct feature to establish human rights court. Section 30 of the act states that establishment of human rights court will speed up cases of the human rights to be solve easily. These courts are to be established in every state. When there is no human right court, the Court of Session will be trying the cases of human rights violation.

4.3.4 The role of Non Governmental organizations in the prevention of torture

Ngo are playing very important role for the protection and promotion of human rights. They work for the weak section of the society. They do volunteered work.²³⁹ The effect of NGO in the society cannot be ignored. The government of India has given it statutory recognition and they are working at great level to implement the various schemes and polices of the Government.²⁴⁰

Protection of Human Act 1993: this act ensures that to spread human right literacy, commission must collaborate with NGOs. Commission also encourages the efforts of NGO's working in the field of human rights.²⁴¹ The National Legal Services Authorities Act, 1987 has also provided for the identification of one NGO in each district for legal

²³⁷ National Human Rights Commission , 'the Video Filming of Post-mortem examination in cases of Custodial Deaths',1995.

²³⁸ National Human Rights Commission on, 'the Video Filming of Post-mortem examination in cases of Deaths in Jail', 200.

²³⁹ Dr. S. Krishnamurthy, *Human Rights*,37 (2006).

²⁴⁰ Fr. Thomas Joseph Therakam , *Role of Non Governmental Organizations (NGO's) in Protection of Human Rights with Particular Reference to Violations by Police*, 186-187(Dr. R.Thilagaraj, *Human Rights And Criminal Justice Administration* ed. 2002).

²⁴¹ S. 12(i),The Human Rights Protection Act, 1993

literacy and legal guidance.²⁴² At international level there are many NGO which are working for the rehabilitation of the victim of the torture.

4.3.5 Rehabilitation of the Victim of Custodial Torture

In case there is violation of human rights of the victim of torture, it is important to help him/her monetary to rehabilitate them, in 1981 united nation took step to help those who are affected. There are many organizations working at national as well international level to help suffered victims. OMCT, IRCT, UNVFT are the NGO working at international level to provide medical, economic, psychological to the victim and their families.

4.4 Human Rights of Pre-Trial Detainees and convicts in India²⁴³

Arrested person kept in the police custody, when a person is in custody he is not subject to torture because he has a right which is available to him and it is the duty of the police to protect them. Pre-trial detainees are handicapped group throughout the world; the condition is same in the developing countries as well. They also don't aware about their rights and it becomes almost impossible to defend them in the court of law. Poverty and illiteracy play a major role that suspect are not able to get the benefit of the law. In some cases, the necessity of the food, shelter also attracts the people to do crime and to go to jail for the sake of basic necessities. People in general exhibit lack of sympathy and compassion for poor suspect or detainees pre –trial detainees, however, find some comfort that the Indian law seek to protect them to a great extent. The law provides an umbrella to the detainees to protect themselves against police atrocities and un-cooperative people. These rights can be divided into 3 parts; rights before arrest, rights after arrest and rights after conviction:

4.4.1 Rights before arrest

Protection against illegal detention: No person can be detained in the custody illegally, Article 21 of the Indian constitution provides that no one shall be deprived of person liberty except according to procedures established by law, here procedure has been interpreted by the supreme court which mean is that it fair, reasonable and just law which

²⁴² Supra note 25

²⁴³ Rattan Sigh & Jaswinder Singh, Human rights of pre-trial detainees, Law journal, Guru Nanak Dev university, Amritsar,45(2006).

seek physical restraint of a person, must be fair, just and reasonable.²⁴⁴ Article 22 of the constitution envisages that a person who has been arrested must be supplied with the ground of his arrest allowed to consult a lawyer of his choice, be produced before magistrate within 24 hours from the time of his arrest alone can authorize any further detention.

*Bombay v Atma Ram*²⁴⁵ the Supreme Court held that if requirement of article 22 are not complied with the detention will be declared invalid on the ground that it is not according to the law. In *Khatri v. State of Bihar*²⁴⁶ the apex court given direction to the state government of Bihar that non-production of suspect before magistrate after 24 hours of arrest should not occur again. *Madhya Pradesh v. Shobharam*²⁴⁷ The Supreme Court held that the arrested person must be get benefited by the service of legal counsel as he brought to the police station irrespective of the fact that he was released later.

4.4.2 Rights after Arrest

- **Presumption of innocence:** it is a rule of criminal as well as natural justice that a person is presumed to be innocent unless it is proved guilty and the principle of presumption of innocence also requires that pre-trial detainees should be given separate treatment which is appropriate to them and distinguish them from the convicted person”.²⁴⁸ It imposes burden of proof is on the prosecution to prove the guilt of the suspect and the benefit of doubt is also given to the accused. No guilt can be presumed against the accused until the charge has not been proved beyond reasonable doubt. This principle is deeply rooted in the place of international conventions in article 11(1) of the universal declaration²⁴⁹, Article 14(2)²⁵⁰ of the Covenant and rule 84(2)²⁵¹ of the Standard minimum rules. Pre-trial detainees are kept in the police custody to ensure their appearance during trial and prevent them to destruct or influence any evidence and prevent further commission of the

²⁴⁴ Prof, Narender Singh, *Constitution of India*, 308(2013).

²⁴⁵ *Bombay v. Atma Ram*, AIR 1954 SC 157.

²⁴⁶ *Khatri v. State of Bihar*, (1981) 1 SCC 627.

²⁴⁷ *Madhya Pradesh v. Shobharam*, AIR 1966 SC 1910.

²⁴⁸ Art. 10 (2) (a), The international covenant on civil and political rights.

²⁴⁹ Art. 11(1), The international covenant on civil and political rights: everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for the defense.

²⁵⁰ Article 14(2), Everyone charged with criminal offence shall have the right to be presumed innocent until proved guilty.

²⁵¹ Rule. 84(2), Standard minimum Rules, 1977: Un-convicted persons are presumed to be innocent and shall be treated as such.

crime. Law enforcement agencies also take all important steps which are necessary to maintain law and order in the society.

*Kali Ram Vs State of HP*²⁵²: in this case, The Supreme Court has emphasized the significance of this principle. Conviction of an innocent person is far serious and it shakes the confidence of the people in the law. So it is important that the conviction should be according to the procedure of the law.

- **Rights against arrest:** English law has defined the defined as the restraining of the liberty of a man's person in order to compel obedience to the order of the court of justice or to prevent the commission of crime or to ensure that a person charged or suspected of crime may be forthcoming to answer it .to arrest a person is to restrain of his liberty by some lawful authority.²⁵³
- **Communication of charges:** It is the important rule of law that an arrested person must be made aware about the charges against him. Article 9 of the convention says that arrested person must be informed the charges and reasons of the arrest. Article 14(3a) states that person must be informed in the language in which accused is comfortable and which he can understand. Article 22(1) of the constitution also states that person must be informed the aground of his arrest. In *Joginder Singh v state of UP*²⁵⁴ Supreme Court laid down the guidelines which must be followed during the investigation. It must be ensuring that there should be proper balance between the police on hand and the protection of the human rights in another hand. Court also held that person must not be arrested on the ground of doubt by the police officer there must be a reasonable ground for such arrest.
- **Access to the counsel:** Article 22(1)²⁵⁵ of the constitution states that arrested person must be defended by the lawyer of the choice of the accused. Because a layman does not know the language of the law, advocate knows the law and knows how to defend him before the law. In the case of *Powel v Alabama*²⁵⁶ Court held that even the intellectual mind and educated layman has little and sometimes no knowledge of the law. He needed a guiding

²⁵² Kali Ram v. State of HP (1973) 2 SCC 808.

²⁵³ Earl Jowitt, The dictionary of English law, vol. 1,152(1959).

²⁵⁴ Joginder Singh v. state of UP (1994) 4 SCC 260.

²⁵⁵ Art. 22(1), The Constitution of India 1951: no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for arrest nor shall be denied the right to consult, and to be defended by, a legal practitioner of his choice

²⁵⁶ Powel v. Alabama,287 US 45 (1932).

hand of the counsel at the time of proceeding in the court because he does not know how to establish his innocence. Criminal procedure code has recognized the right to be defended by the pleader of the choice.²⁵⁷ As per the section 126 of the evidence act, 1872 says that communication between the accused and his lawyer under the circumstances are privileged and confidential.

- **Free legal aid to accused at state expense:** Legal aid is essential for the needy person, so that he can get the benefit of the law. Right of legal aid is not a fundamental right as such but in the recent years it has been recognized under article 21 of the constitution while dealing with different case laws like Hussainara Khatoon ²⁵⁸. Article 39A²⁵⁹ of the constitution, in 44th amendment of the constitution, equal justice and free legal aid was inserted. It is not possible for poor people to arrange a lawyer for them. Free legal aid is helping them to knock the door of the court in case of any violation of the rights. In *Sukhdev v. Union Territory of Arunchal Pradesh*²⁶⁰ Failure to provide free legal aid to an accused unless he is refused would vitiate the trial.
- **Right against self – incrimination:** Article 20(3)²⁶¹ of the constitution provides that no accused of any offence shall be compelled to be witness against himself. This prohibits all kind of compulsion to make an accused witness against himself. In the case of *MP Sharma v Satish Chandra*²⁶², the Supreme Court observed that following are the rights related to it: It is right available to the accused, it protects him against compulsion to be witness and it is a protection against compulsion relating to his giving evidence against himself.
- **Right to speedy trial:** There is a famous saying that justice delayed is justice denied. It is important that there must be speedy trial in criminal case .because suspect cannot be kept in suspense for long for his charges against him, either it should be confirmed or

²⁵⁷ S. 303, The Criminal Procedure Code: any person accused of an offence before a criminal court or against whom proceeding are notified under this code, may be right be defended by a pleader of his choice.

²⁵⁸ Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 81.

²⁵⁹ Art.39, The constitution of India, 1950: the state shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provides free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities .

²⁶⁰ Sukhdev v. Union Territory of Arunchal Pradesh ,AIR 1986 SC 991

²⁶¹ Art. 20(3), The constitution of India: No person accused of any offence shall be compelled to be a witness against himself.

²⁶² MP Sharma v. Satish Chandra ,AIR 1954 SC 300.

cleared. Because accused wait for a years in the custody for their trial of the case. It is also form of torture which cause them mental torture. It has seen in some cases that accused has to spend more than a period of their punishment in the custody. *Hussainara Khatoon v. Home Secretary, State of Bihar (1980) 1 SCC 81*, court held that it is our fundamental right protected under article 21 of the constitution and it is the essence of the criminal justice system. In the case of *Abdul Rehman Antuley v R.S. Nayak*²⁶³ the Supreme Court has laid detailed guidelines to fix the time period of the trial of an accused. The Burdon is on the prosecution to justify and explain the delay. The court held that right to speedy trial is flow from the article 21 of the constitution and it is available to the accused all the time during the investigation, inquiry, trial, appeal, revision.

- ***Right against inhuman treatment:*** The Supreme Court held in the case of *Kishore Singh v State of Rajasthan*²⁶⁴, using third-degree method by police is the naked violation of human rights and Article 21 of the constitution. Court directed the government to take necessary step to educate the police to respect human rights. Under-trials are subject to interrogation but they should not get torture on the name of interrogation. Any kind of inhuman, cruel and degrading treatment by police towards under-tail is punishable and victims must be compensated. Female suspects must be kept separate from the male accused and must be guarded by the lady constable only.
- ***Right to release on bail:*** Bail is a basic to the system of protection set up by the constitution and it is deep roots in the modern legal system. It is very important to save the liberty of an individual, when bail is refused it is also a refusal to the liberty of the person. The apex court of the country is always come forward to protect the liberty of the individual, in case the bail is denied or when the police officer disobeys improperly use the power of investigation. It has been found in many cases that poor people are unable to take bail because of poverty so that court in *Babu Malik v State of MP*²⁶⁵ that accused should be released on his personal bond without sureties and the amount of security should not be in excess that it becomes impossible for the person to afford it.

²⁶³ *Rehman Antuley v. RS Nayak*, AIR 1992 SC 1630.

²⁶⁴ *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625.

²⁶⁵ *Babu Malik v. State of MP*, AIR 1960 SC 847, *Moti Ram v. State of MP*, AIR 1978 SC 1594; *Hussainara Khatoon v. Home secretary, State of Bihar*, AIR 1979 SC 1360.

- ***Independent and unbiased Judiciary:*** It is very important that judiciary must be without any dependency and unbiased for any trial or criminal so that they can produce the fair judgment. It was continue demand to separate the judiciary from the executive because there was fair that executive who is responsible to arrest of a person, release a suspect on bail, trial and Judgment. It was decided to give more independency to Magistrate to give their decision biasfree, which is not prejudice to accused.

4.4.3 Rights after Convictions:

In *Sunil Batra v Delhi administration*²⁶⁶ it is the punishment which can be imposed by the court not by the jail authorities. Court directed to not to use solitary confinement because it makes him a non-person. Our system of punishment is reformatory in nature which reforms the convicts not to make them more violent.

- ***Right against handcuffing and fetters:*** *Prem Shankar v Delhi administration*²⁶⁷ held that handcuffing is inhuman in nature and should be use only when there is danger to others.
- ***Right against inhuman treatment:*** In *Kishore Singh v State of Rajasthan*, the Supreme Court held that use of third degree methods by police for investigation is in violation of Article 21 of the constitution, also directed to prisons and police authorities for safeguarding the rights of the prisoners and person in lock-ups, particularly women and children.
- ***Right to healthcare:*** Prisoners have right to health. In *Parmanad Katara v Union of India and Others*²⁶⁸ state has an obligation to save life whether he is innocent or criminal and liable to be punished under the law. Right to adequate health conditions is already recognized under universal declaration of human rights. International convention on economic, social and culture rights states that prisoners have a right to the highest attainable standard of physical and mental health.

As per the rule of natural law which has been codified in most of countries, person is considered innocent unless he is not proved guilty by the impartial and unbiased court. Once a person does any act which is anti-social, he is arrested and interrogated by the police in the custody. When the person is in police custody, police presumed him to be

²⁶⁶ Sunil Batra v. Delhi administration ,AIR 1978 SC 1675.

²⁶⁷ Prem Shankar v. Delhi administration, AIR 1980 SC 153.

²⁶⁸Parmanad katara v union of India and others, 1989 AIR 2039, 1989 SCR (3) 997.

culprit and use different methods to extract information from him and they usually apply the third degree method to extract importation. False confession of guilt appears to be lesser evil merely to avoid future torture. Due to lack of proper knowledge about the crime, they never understand the gravity of being suspect in a criminal case.

Right to protection against torture must be provided. Any punishment which is too cruel or torturous is un-constitutional.²⁶⁹ Any form of torture, cruel, inhuman or degrading treatment would be offensive to human dignity and constitute inroad in to this right to live and it would, on this view, be prohibited by Article 21 of the constitution unless it is in accordance with procedure prescribed by the law.

²⁶⁹ Inderjeet v. state of U.P., AIR 1797 SC 1867.

Chapter 5

Custodial Torture: Constitutional and Legislative Measures

The constitution of the India protects the rights of person and gives liberty and freedom which uplift the society. The constitution is prohibited the inhuman act of the police like death, rape, and torture in the police. There are so many other statutory provisions define the custodial torture and other crimes in the custody. The substantive law provides the substance of the offence and also the punishment in case of custodial torture and crime in the custody. Procedural law explains the procedure of the law and also save the rights of the person in the custody. The constitutional and other statutory provision is added with the judicial pronouncements.

5.1 Constitutional provision on Human Rights and Custodial Torture

The human rights are not limited to a free citizen; it is also available to every person even if he is in custody of jail. If a person is in jail, it never means he is not a human being, human rights are inalienable. The constitution of India is safeguarding those rights and any violation of such rights is void as prescribed under law. Gandhi also said; hate the sin, not the sinner.

5.1.1 Protection of accused with regard to conviction

Following rights are given under constitution which prohibit the illegal detention and respect the dignity of the detained persons.

- Article 20²⁷⁰ of the constitution imposes the restriction on the criminal process. This article states that no man shall be subjected to great penalty than that which might have been imposed under the law in force at the time of the commission of the offence. Parliament and state legislature has the power to make any law under article 245,246 and 248 but they cannot make any laws which are retrospective in nature.²⁷¹
- Article 20(2): Protection against double jeopardy: no one can be punishing for the same offence twice.

²⁷⁰ Art. 20, The Constitution of India, 1949: Protection in respect of conviction for offences (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence(2) No person shall be prosecuted and punished for the same offence more than once (3) No person accused of any offence shall be compelled to be a witness against himself.

²⁷¹ Rama Krishna v. state of Bihar, AIR 1963 SC 1669 .

- Article 20(3) Right not be a witness against himself is the most relevant article to the topic; it states that criminal law should not be framed in such a way that it is destroying the deeper moral values of the justice. Article 20(3) protects the person from self-incrimination it means in any criminal case, accused cannot give his own testimony of an offense which might be committed by him or not. *M.P. Sharma v. Satish Chandra*²⁷², the Supreme Court observed that these rights represent the following essentials:
 - (a) It is a right relating to a person, who is accused of an offence,
 - (b) It is a protection against force to be a witness,
 - (c) It is a protection against such compulsion relating to his giving evidence against himself.

Section 26 of the evidence act which states that confession by accused to the police in custody will not be proved to himself because there can be chances of torture by the police on accused to extract information which can prove him guilty of the crime. For the protection of the accused article 20(3) is put a ban on section 27 of the evidence act. 154th Law commission states that this is a mischief provision, which controls the other provision of the confession made to the police by the accused In the case²⁷³, case was registered under section 179²⁷⁴ of Indian penal code and lady was asked to give answer of long questions during investigation but she taken the plea of self-incrimination. Court observed that section 161²⁷⁵ of Cr.P.C. give power to police to examine the accused, if information is taken with mode of pressure or with crude behavior only then it would attract article 20(3) of the constitution.

²⁷² *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300.

²⁷³ *Nandini Satpathy v. P.L.Dani*, AIR 1978 SC 1025.

²⁷⁴S.179, The Indian Penal Code 1861: Refusing to answer public servant authorized to question -Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

²⁷⁵S.161, The Criminal Procedure code 1973: Examination of witnesses by police 1. Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case 2. Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. 3. The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

5.1.2 Constitutional Safeguard of life and personal liberty

Article 21 of the constitution protects the right to life and personal liberty. No one shall be deprived of life or personal liberty except according to the procedure established by the law. The ambit of Article 21 was no more limited to life it includes life with physical existence and lives with human dignity.²⁷⁶ Judiciary expanded the scope of Article 21 to custodial crimes Court held in various judgments that element of torture is unconstitutional. In *Raghubir Singh v Haryana*²⁷⁷, The court observed that a scar given by police torture shows us the shameful act of the guardian of the society. It infringes the human rights and also causes danger to the live and freedom of a person as given under Article 21 of the constitution. In *Prem Shankar Shukla v Delhi Administration*²⁷⁸ Court held that shackles are brutal, unreasonable, and without fair process of law which violate the Article 21 of the constitution. *D.K Basu v State of west Bengal*²⁷⁹ Custodial violence includes torture and deaths in lockups. Torture is a hit a blow at the rule of law which demands that which demands that the powers of the executive should not only be derived from law but, also that the same should be limited by law.

If a person is kept in jail for the execution of death; he cannot be kept in solitary confinement it will amount to imposing punishment for the same offence twice.²⁸⁰

5.1.3 Protection against Arrest and Detention

- **Article 22:** The person who is arrested shall not be kept in custody without informing him ground of such arrest, he shall not be deprived by the right to consult legal practitioners of his own choice. This right is fundamental and essential to fair trial²⁸¹. Criminal procedure code provision under section 303²⁸² says that accused has a right to

²⁷⁶ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

²⁷⁷ Raghubir Singh v. State of Haryana, AIR 1980 SC 1087.

²⁷⁸ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535.

²⁷⁹ D.K Basu v. State of West Bengal, AIR 1963 SC 1295.

²⁸⁰ Inderjeet v. State of Utter Pradesh, AIR 1975 SC 1867.

²⁸¹ Art. 22(1), The Constitution Of India, 1949:

²⁸² S.303, The Criminal Procedure Code 1973: The Right of person against whom proceedings are instituted to be defended. Any person accused of an offence before a Criminal Court, or against whom proceedings are instituted under this Code, may of right be defended by a pleader of his choice.

be defended by the pleader of his choice. Even if a person is failing to hire an advocate for him, the state is duty bound under article 39-A to provide him free legal aid.²⁸³

- **Article 22(2)** states that Arrested person must be produced to the magistrate within 24 hours of the arrest but the person is foreigner and he is arrested under other provision of law for preventive action, these provision will not apply.

When a person is arrested without warrant he must be communicated by the police officer the ground of such arrest. If such communication is must be made in the language which he understood, otherwise, it would not amount to sufficient compliance with constitutional requirements.²⁸⁴

- **Article 32 of the Constitution:** is providing constitutional remedies. In case there is illegal detention of a person, he can knock the door of the Supreme Court under Article 32 and to the High Court under 226 of the Constitution. If any person detained in custody illegally he can file of Writ of Habeas Corpus and if it is found by the court that there is no ground for such detention, he can be set free²⁸⁵. This writ can be issued in certain circumstances:
 - When the arrested person did not produce before the magistrate within 24 hours,
 - When person has not done any violation of law,
 - When such arrest is un-constitutional
 - If the detention is just to cause harm to person or which is malafide in nature.

5.2 Prevention of Custodial Torture under Criminal Law

Criminal Procedure code is a procedure law. In India, there is no direct provision which prohibit torture but there are many provisions given under different statute which

²⁸³Hussainara Khatoon (IV) v. Home Secy., State of Bihar, (1980) 1 SCC 98, 105: The right to free legal services is, therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer.

²⁸⁴ S.50(1), The Criminal Procedure Code 1973 :Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

²⁸⁵ Subhash C. Kashyap, *Constitutional Law of India*, 768-769(2nd ed. 2015).

safeguard the human rights and also protect the people from the torture and brutality of the police. There are many provisions which protect the rights of the accused under Criminal Procedure code.

5.2.1 Provision under criminal Law

Criminal procedure code explain the procedure which must be follow when there is commission of an offence, what method police should follow when there of a person and protect the rights of the arrested person. There are number of sections which penalize the offence in custody or arbitrary arrest and also to pay compensation to victim.

- **Section 163:** No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in Section 24²⁸⁶ of the Indian Evidence Act, 1872. But no police officer or person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will: Provided that nothing in this sub-section shall affect the provisions of subsection (4) of Section 164.
- **Section 164(4):** Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record.
- **Section 49:** the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.
- **Section 50:** this section states that person must be informed about the ground of arrest and he also has a right to bail. Arrested person must be informed the reason of his arrest, if he is arrest without warrant he must be informed that he can get a bail and he may arrange sureties. Court held that when arrest is made without warrant and no communication regarding is made to the arrest person it is led to illegal detention.²⁸⁷
- **Section 55(A):** the proper care must be given to the health and safety of a person who is under the custody.

²⁸⁶S. 24, The Evidence Act, 1973: Confession caused by inducement, threat or promise when irrelevant in criminal proceeding.

²⁸⁷ Ajit Kumar v. State of Assam, 1976 Cr .L.J. 1303.

- **Section 56:** this section states that arrested person should be send officer in charge of police station or to the concerned Magistrate within 24.²⁸⁸
- **Section 57:** the purpose of the section is to ensure that the accused is presented before a Magistrate with a minimum possible delay.
- **Section 58:**this section requires the officers-in-Charge of police stations shall report to the District Magistrate or to the Sub-Divisional Magistrate, the cases of all persons arrested without warrant, with the limits of their respective stations, whether such persons have been admitted to bail or otherwise.
- **Section 75:** this section requires that substance of the warrant must be notified to the person arrested, and on demand it must also be shown to him so that he may have an opportunity to read it.²⁸⁹
- **Section 76:** this section saying that person must be produce before the Magistrate and the time should not be more than 24 hours.

5.2.2 Provisions under Indian penal Code 1860

India penal code is a substantive law, which explain the ingredient of any crime which helps to know which crime has committed and what would be the punishment. Section 330 and 331 of Indian penal code is expressly prohibited the acts of torture, and cruel treatment of the police.

- **Section 330:** If any person causes a hurt to other person (victim) to take confession or any information which may lead the person detection of an offence, any information given by him may lead them to find a property and any valuable thing. Such person shall be punished with imprisonment for seven years of either description for a term which may extend to seven years, and shall also be liable to fine.
- **Section 331:** the offence under this section is cognizable, warrant case, non-bailable and non-compoundable case which is exclusively and triable by the Court of Session. If the grievous hurt given by the sufferer with the purpose of extracts confession or information .if the sufferer restrain the accused with the purpose of restoring the property or any valuable thing from him, if sufferer wants to satisfy his own claims and demand from the

²⁸⁸ Mst. Bhagan v. state of Pepsu, A.I.R 1965 Pepsu 33.

²⁸⁹ Satish Chandra Rai v. Jodu Nandam,(1899) 26 Cal 748.

accused. When the court is dealing with such cases, where false accusation of torture are also made which try to take benefit of serious concern of custodial violence. if the guilt is proved he shall be punished with imprisonment of either description for a term which may extend to ten years , and shall also be liable to fine.²⁹⁰

- **Section 348:** this offence is committed when a person is wrongfully confined by another person for the purpose of extorting confession or any information which may lead to detection of an offence or misconduct such confinements may also be committed or the restoration of property and any valuable property. If a police officer detain a person who is not concerned with investigation for the period of more than 24 hours such officer is guilty under section 348.²⁹¹

5.2.3 Provisions under Evidence Act 1872

The evidence act provides such procedural side of the law which lays down the provisions which reach to the truth and getting the assertions and the facts proved before it.

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

Confession has not been defined in the act, “it is an admission made at any time by a person charged with crime stating or suggesting the interference that he committed the crime.”²⁹² Court held that confession which is voluntary and free from any pressure can be accepted.²⁹³

- **Section 25:** No confession made to a police-officer shall be proved as against to a person accused of any offence. Information given to the police officer is untrustworthy. The

²⁹⁰ Batuk Lal, *Commentary on the Indian Penal Code*, 1860, 2004(3rd ed. 2016).

²⁹¹ Ibid at 2040.

²⁹² Batul Lal, *The law of Evidence*, 140-141(19th Ed. 2012).

²⁹³ Francis Stanly v. Intelligence officers, AIR 2007 SC 794 at p.796.

basic ground for not admitting confession to the police officer is to avoid danger of admitting false confession.²⁹⁴

- **Section 26²⁹⁵**: a confession which is made in the custody of the police officer cannot be proved against him unless it is made before a magistrate.²⁹⁶
- **Section 27²⁹⁷**: if the confession of the accused is supported by the discovery of a fact then it may be presumed to be true and not to have been extracted. It was held that section 27 of the Evidence Act was enacted as proviso to the section 25 and section 26, which imposed a complete ban on the admissibility of any confession made by the accused either to police or at any one who is in custody of the police. Nonetheless the ban would be lifted if the statement is distinctly related to discovery of the facts. The object of making provision in Section 27 was to permit a certain portion of statement made by the accused to Police Officer admissible in evidence Whether or not such statement is confessional or non-confessional.²⁹⁸

5.3 Provisions under Other Statutes to Curb Custodial Torture

Apart from above mentioned enactments there are various other provisions under different statutes which directly or indirectly deal with custodial torture. To curb custodial torture, these provisions regulate the functioning of police and other bodies.

5.3.1 Provisions under Police Act, 1861 The Police Act has organized the police set-up in India. But every States can make any provision in their respective states for the police organization as listed in the State list and article 246 of the constitution.

Section 29: every police officer if violate the order made by competent authorit: If he is withdraw his duties without permission or without intimating two months, If he is involve in the employment other than police duty, If he makes suffer to person in his custody when he was responsible to take care of that person, he shall be liable for such an offence will be punished for three months or imprisonment not exceeding or both.

²⁹⁴ Paulose v. State of Kerla, 1990 Cr.L.J.10D Ker.

²⁹⁵ S. 28, The Evidence Act 1872: no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such persons.

²⁹⁶ Kishore Chand v. State of Himachal Pradesh, AIR 1990 SC 2140.

²⁹⁷ S. 27, The Evidence Ac 1872: when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

²⁹⁸ Pandu Rang Kallu Patil v. State of Maharashtra, AIR 2002 SC 739.

5.3.2 Provisions under Army act 1950

Section 50: any person subject to this Act who commits any of the following offences, that is to say:- Any arrested person, if confined to military custody without brought that person for trial to the concerned office within 48 Hours; and in any case within forty eight hours, therefore, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged; Shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment.

5.3.3 Provisions under Navy Act 1957

Section 85: Naval law is applicable on the concerned person and if any of them is detained in the naval custody, he cannot keep there without informs the ground of such arrest. The person who is arrested must be present before the commanding officer within 48 Hours excluding the journey from the place of arrest. No person can be kept in the custody more than time prescribed.

Section 86: the person who is in custody shall be taken for the trial without any delay; the case will be investigated by the concerned authority.

Section 87: every person who is under the naval custody should be safe wherever he has kept either ship or his establishments.

5.3.4 Provisions under Air Force Act 1950

Section 50: any person who is fall under the Air force act, if he commits any of the following acts: A person kept in confinement without producing that person for trial or fails to produce his case to the proper authority. A person is kept in air force custody without any reason and if he didn't produce to the authority within 48 Hours after an account in writing signed by himself of the offence with which the person so committed is charged; shall, on conviction by court martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment.

Section 103: The duty of the commanding officer is not to keep the person in custody more than 48 hours, if he is not charge with any charges and the investigation has not found any charges against him. In case the person is kept in custody more than 48 hours, it is up to the commanding officer to prove under which charges he kept the person in the custody. Sunday and public holiday shall be excluded from the time.

5.4 Immunities available to Public Servants under different Provision of the law:

- **Code of Criminal Procedure code 1973**

Section 197, Prosecution of Judges and public servants: if any person either Judge or Magistrate or any public servant while acting on his duty commits any alleged offence, no court can take cognizance without the sanction of the Government.

Section 45, Protection of members of armed forces from arrest: No member of the army can be arrested for anything which he done during discharge of his duty without the permission of the Central Government.

The aim of these sections is to protect the public servant from any vexatious prosecutions. It can only be permissible if the superior authority has approved such prosecution. 152nd Law Commission Report recommended inserting explanation in section 197(1) of the Cr.P.C.²⁹⁹

- **Armed Forces (Special Powers) Act, 1958**

Section 6 says that, anything done by any person during the discharge of functions, no persecution, suit or any other legal proceeding can be instituted against him without the permission of the central government.

- **Armed Forces (Jammu and Kashmir) Special Powers Act, 1990**

Section 7 provides that, No trial, suit or other legal proceeding shall be start against any person for anything which he has done during delivering his duties except with the previous sanction of the Central Government.

- **Terrorist and Disruptive Activities (Prevention) Act, 1987**

²⁹⁹ 152nd Law commission report, Custodial Crimes, 40(1994): the commission recommended to insert explanation to section 197(1) of Cr.P.C., explanation:- for the avoidance of doubt, it is hereby declared that provision of this section do not apply to any offence committed by judge or public servant, being an offence against the human body committed in respect of a person in his custody, nor to any offence constituting an abuse of authority.

Section 26 of the provided that, Central government, state government, any other authority upon whom powers have been conferred under this act, if they done anything in good faith while acting under this act, no trial, suit or any legal proceedings can be start against them for any action taken by them.

- **The Police Act, 1861,**

Section 43 of the act defines that: If any law proceeding persecuted against any police officer for any action which he has taken under the capacity. He can take a plea that such act was done under the warrant which is issued by the Magistrate. It can be proved by producing the signed warrant of the Magistrate. but if it seems to be genuine to the Magistrate, the police officer can be charged for the same.

- **Unlawful Activities (Prevention) Amendment Act, 2004**

Section 49 of the act provides that, The Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorized in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made there under; and any serving or retired member of the armed forces or para-military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism.

5.5 Bill on Torture

Journalism exposed the India alia the practice of the torture and second the public interest litigation³⁰⁰ played a major role to bring the cases of the torture before the court. In D.K. Basu verses state of west Bengal and Ashoka K Johri verses State of utter Pradesh requirement to be followed in all cases of arrest and detention were issued by the Supreme Court. The process of the accountability of such acts was strengthened when there was enactment of the protection of human rights in 1993.³⁰¹

The prevention of the torture bill, 2010 was introduced to the Lok Sabha on 26 April after India ratifies the united national convention against Torture and other Cruel, Inhuman or

³⁰⁰ Dr.B.N. Mani Tripathi, Jurisprudence, 431(18th ed., 2010).

³⁰¹ A. G. Noorani ,*Accountability for Torture* , Vol. 34, No. 45 (Nov. 6-12, 1999), Economic and Political Weekly, p. 3159-3161(1999), available at, <http://jstor.org/stable/4408588> Last seen on,23/3/17.

Degrading Treatment or Punishment. Lok sabha passed this bill on 6 may 2010.this law will provides punishments for torture inflicted by police servants or by any person. it is a very small act, still not get assent.

5.6 Reports of Law Commission of India on Custodial Violence

Law commission of India is an advisory body but has been key instrument in the law reforms of India. Law commission has examined various provisions relating to custodial torture and suggested many alterations in assertion, addition as well as deletion in related provisions. It has time to time submitted its reports on amending and reforming the laws related to custodial Torture.

5.6.1 77th Law Commission report on Delay and Errors in Trial courts,(1978)³⁰²

Due to pendency of cases in the courts, there is blockage in the delivery justice. The delay by trial court is common everywhere, accused suffered a lot. They have to wait in jails for the decision of the court of their conviction. Sometimes they spend more than their original punishment in the jails. And according to the famous saying justice delay is justice denied. They suggested adopting: To promote arbitration and conciliation , Appointment of more judges, Control of errors by the high court towards sub-ordinate courts, Within three years to clear all blockage of cases.

5.6.2 78th Law Commission report on congestion of under-trial prisoners in jail,(1979)³⁰³

The government of India brought the issue to the law commission on large of number of under-trials prisoners are in the jails. What is to be done with the person who is charged with a crime but not yet convicted of it? This question compels the law makers to think and find a solution to the problem. There are two principle of Penology which states that Un-convicted Person is innocent and the course of justice must proceed unhindered by the activities of those deprivations who would seek to subvert it. Under-trial is often kept with convicted persons that are inherent in the very process of detention. So what does it

³⁰² 77th Law Commission of India Report, *Delay and Errors in Trial courts*, (1978), Available at, <http://www.lawcommissionofindia.nic.in/51-100/Report77.pdf>, last seen on 23/3/17.

³⁰³ 78th Law Commission of India Report , *Congestion of under-trial prisoners in jail*,(1979) Available at, <http://www.lawcommissionofindia.nic.in/51-100/Report78.pdf>, Last seen on 17/4/17.

makes difference. It is against the rights of a person.³⁰⁴To reduce the list of under-trials, it is important to liberalize the bail amount and sureties. The commission suggests that to deal with this problem three type of person must consider:

- Person being tried for non-bailable offence, in respect of whom the court has declined to pass an order for their release on bail.
- Person being tried for non-bailable offence, in respect of which court has passed an order or bail but because of finding appropriate sureties or because of some other reasons, do not furnish the bail bond.
- Person who is being tried for bailable offences, but who because of difficulty of finding appropriate surety or some other reasons, do not furnish the bail bond.³⁰⁵

5.6.3 113th Law Commission on Injuries in Police Custody in (1985)³⁰⁶

The Supreme Court of India has to deal with highly shocking incident of torture of a suspect in police custody who died within 6 hours after his arrest and court held them culpable homicide not amounting to murder. Taking note on the Supreme Court judgment, law commission of India decided to take up the subject and examine whether there is need to reform the law on this subject.

In *State of U.P. v. Ram Sagar Yadav*³⁰⁷, A farmer from UP named Brij Lal had difference with neighbor and they filed complained against him which was false. Police officer asked bribe for hushing up the matter and Brij Lal given him Rs. 100 to the constable. And constable was not satisfied with the case he forwarded it to the Superintendent of police. He was called to the police station, by noon he was in critical condition that he was not even in a position to walk to the courtroom. Magistrate went out and found that Brij Lal had 19 injuries on the body³⁰⁸. In the dying declaration he charged that police station officer and constable beaten him up in the custody and he died in the evening. The persecution and conviction of SHO³⁰⁹ and police constable: they were convicted for the offence of culpable homicide not amounting to murder and sentenced imprisonment for

³⁰⁴ Ibid at Para 1.8,1.9.

³⁰⁵ Ibid at Para 1.26.

³⁰⁶ 113th law commission of India Report, *Injuries in Police Custody*, Available at, <http://lawcommissionofindia.nic.in/101-169/Report113.pdf>, last seen on 16/4/17.

³⁰⁷ U.P. V Ram Sagar Yadav, Criminal appeal no. 69 of 1975, decided 22nd January 1985. AIR 1985 SC (March-April)

³⁰⁸ Supra 305, at Para 2.1.

³⁰⁹ Station House officer

seven years. On appeal to high court they were acquitted. Against the judgment of the High Court, the state government of Uttar Pradesh appeals to Supreme Court and court passed stringed judgment against the police officer.

Observations of the Court³¹⁰

Court held that, it is very heinous crime committed by the police officer; they emphasized the extremely strange character of a situation where police officer alone and none else can give evidence regarding the circumstances, The situation naturally results in paucity of evidence and probable escape of the guilty persons, The Supreme Court called for re-examination of the law of Burdon of proof, Police officers, who commit atrocities on person in custody, will not be escape punishment for want of evidence, Need for amendment in the law.

Recommendations³¹¹: incident of torture in police custody id abuse of official position and it is a matter of serious consideration. There is need to insert suitable provision as addressed by the Supreme Court. Law commission recommended inserting new section 114B to the Indian evidence act, 1872 as:

- In a prosecution (of a police officer) for an offence constituted by an act alleged to have bodily injury to a person, if there is evidence that it is caused during the person was in police custody, the court may presume that injury was caused by the police officer having custody of that person.

The court in deciding the presumption will consider the following points:

- The period of custody
- Any statement made by the victim as how the injuries received
- Evidence of any medical practitioners who examined the victim
- Evidence of any Magistrate who might have examined the victim statement

This was the landmark judgment hen first time the judiciary understood the root of such cases and law commission also consider it and recommended some change which can bring very positive result but it is so unfortunate that this provision is not inserted in the Evidence Act.

³¹⁰Supra 305 at Para 2.2.

³¹¹Supra 305 at para 4.1.

5.6.4 135th Law Commission report on woman in custody(1989)

Minister of Law and Justice has forwarded a copy of the Report submitted by the National Expert Committee on the behalf of the ministry of the state on Women Prisoners. Law commission has given recommendation:

- The arrest of the women should be made by the lady constable only. Male officer shall not touch the women suspect³¹²
- Law commission examined the time of arrest that no women should be arrest before sunrise and after sun set.³¹³
- Commission recommended that medical examination of the accused will helpful to secure the evidence of the crime. And it must be done by the registered medical practitioner.³¹⁴
- For the purpose investigation a women who is under the age of 15, must be get checked at her residence place.³¹⁵

5.6.5 142th Law Commission report on concessional treatment of offender on their imitative choose to plead guilty without any warning (1991)³¹⁶

The commission has to exercised the cases of delay in dispose of criminal cases in trials and appeals and number of under-trials are waiting in the jail .it is important to find

³¹² S.46, The Criminal Procedure Code 1973: This provision was inserted in criminal procedure code in 2005 under section 46: provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

³¹³ S.46, The Criminal Procedure Code 1973: This provision was inserted in criminal procedure code in 2005 under section 46: Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made

³¹⁴ S.154, The Criminal Procedure Code 1973: in 2009, Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner, also available at <http://voice4india.org/wp-content/uploads/2013/05/THE-CODE-OF-CRIMINAL-PROCEDURE-AMENDMENT-ACT-2008.pdf>, last seen on 17/4/17.

³¹⁵ S. 160, Criminal Procedure Code, 1973: Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman reside.(inserted in criminal in 2013.)

³¹⁶142nd The Law Commission Report, *Concessional treatment of offender on their win imitative choose to plead guilty without any warning (1991)*, Available at, <http://www.lawcommissionofindia.nic.in/101-169/Report142.pdf>, last seen on 17/4/17.

remedy for the disposal of criminal cases.³¹⁷The commission has focused on the probation of offender and compounding of offences³¹⁸

5.6.6 152nd Law Commission report on custodial crimes (1994)³¹⁹

Torture of suspect and misuse the power by the police is the normal complains made every day. So commission decides to ask the opinion of all on this issue. After analyzing everything commission recommended to amend some substantive and procedural provision of Indian penal code, criminal procedure code, evidence act. Supreme Court also held in *Raghuvir Singh v state of Haryana*³²⁰ police torture cause terrible marks on the mind of a person and it is a danger for the liberty of person in the custody and clear violation of human rights. They recommended:

- **Section 54 of the Criminal Procedure Code**³²¹: commission recommended that while section 53 is deal with examination of the accused on the request on the police officer but section 54 is beneficiary provision which is concerned right of the accused to get check medically to establish that crime has committed against his body. Section 54 states that if a person while in court can ask the Magistrate to get check him by medical practitioner, commission recommended that it must be strengthen by making it a right of accused to get medically checked by the registered medical Practitioner. It will help to prevent the mal-practices going on in custody. It must be ensured by the Magistrate that whether a person has complaint for the torture, mall-treatment, and sexual exploitation.³²² 84th law commission³²³ 4th chapter also deal with the importance of medical examination of the accused.

³¹⁷ Ibid at Para 1.1.

³¹⁸ Ibid at Para 1.3.

³¹⁹ 152nd Law commission report, *Custodial crimes*, (1994), Available at, <http://lawcommissionofindia.nic.in/101-169/Report152.pdf>, last visit on 18/7/17.

³²⁰ *Raghuvir Singh v. State of Haryana* , AIR 1980 SC 1087.

³²¹ S. 54,Criminal Procedure Code 1973: was amended by act 25 of 2005,again in 2009 it was substituted by the act5 of 2009.

³²² Supra 318, at para 7.4.

³²³ 84th Law commission, available at, <http://lawcommissionofindia.nic.in/51-100/report84.pdf>, last visit on 19/4/17.

- **Recommendation to insert section 54 A**³²⁴: For effective and independent investigation of the allegation of the offence of torture, it will direct to approach to appropriate authority for the complaint.
- **Recommendation to amend section 114 of the Evidence act**³²⁵: Commission recommend to follow the suggestion of 113th law commission report to insert section 114B and add two more points to strengthening this section: First, it must include death of the person, second it must be applicable to all public servants who has power to arrest the person.
- **Section 27**³²⁶ **of the Evidence Act**³²⁷: Section 27 must be repealed, the minimum can be done this section is to revise the section to make it admissible the fact discovered but not the information. And it must be replaced by following section: Discovery of the fact at the instance of the accused: when any relevant is disposed of to as discover in consequence of the information received from a person accused of any offence, whether or not such person in custody in the police officer, the fact discover may be proved, but not the information, whether it amount to confession or not.
- **Section 25 and 26 of the Evidence Act**³²⁸: Section 25 and 26 at present confine to police officer only who has power to arrest person, it must be extend to all public servant who has power to arrest the person.
- **Insertion of Section 357 A in Criminal Procedure Code**³²⁹
To ensure compensation in case of custodial offence must be added a section 357 A; which states that a) twenty five thousand in case of bodily injury b) Rupees one lakh in case of death of a person in the custody, the court will consider the circumstances like the injury caused to person, treatment occur for the rehabilitation of a person.

³²⁴ Supra 318, at Para 8.5.

³²⁵ Supra 318, at Para 11.5.

³²⁶ S. 25, The Evidence Act: How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

³²⁷ Supra 318, at Para 11.6.

³²⁸ Supra 318, at Para 11.7.

³²⁹ Supra 318, at Page no 47.

Recommendation on police organization³³⁰: There is need to separate the investigation wing from law and order wing. To speed up the investigation or to make official expert in their work, it is important to make their different wing.

5.6.7 177th Law Commission report on Arrest (2001)³³¹

Law commission taken the sue motu with a view to regulate the power of arrest as it is vested under section 41 of the Criminal procedure code. Commission has suggested amending section 41 which is related to arrest without warrant and in particular substitution of clauses (a) and (b) of sub-section (1) of section 41. We have also recommended deletion of the present sub-section (2) of section 41 and substitution of another provision in its place. Besides the amendment of section 41, amendments are recommended to several other provisions in the Code of Criminal Procedure.

5.6.8 180th Law Commission report on article 20(3) and Right to be silent³³²

There was detailed discussion on the right to silent in India as well as other countries, but it is found that, the right to silent is basic right which protect the accused proved the guilt and it is the duty of the persecution to prove his guilt beyond reasonable doubts. If it is not available than interrogation agencies will take the benefit of it and accused will be subject to torture again. In the end of the report, commission found that right to silent is necessary, any changes in this will ultra virus the article 20(3) and article 21 of the constitution of India.

5.6.9 20th Law Commission (2012-2015)

This law commission will give reference to many issues and out of all Elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle those decisions should be just and fair.

³³⁰ Supra 318, at Para 13.5, 13.6.

³³¹ 177th Law commission Report, *Arrest*, (2001), available at: <http://www.lawcommissionofindia.nic.in/reports/177rpt1.pdf>, last seen on 19/4/17.

³³² 180th Law commission Report, *Article 20(3) and Right to be silent*, Available at, <https://indiankanoon.org/doc/10337889/>, last seen on 19/4/17.

5.6.10 21st Law Commission of India (2015 to 2018)³³³

Prime minister Narendra Modi has given an approval on the constitution of the law commission of law. It shall also undertake studies and research for bringing reforms in the justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation etc.

5.7 Reports of Committees on Custodial Torture

Time to time, many committees has been established by the different department to check and suggest any lacuna in the law. These committees' recommendations are not compulsory to follow.

5.7.1 Mallimath Committee Report³³⁴

The committee felt that all the rights of accused flowing from the laws and judicial decision must be put in different schedule. Chapter 4 regarding the manner of protection be made statutory and it should incorporated in the criminal procedure code. It also recommends regulating the mis-use power of the police officer.

5.7.2 Justice Verma committee:

Committee recommended that the all complaints regarding the rape, death, or torture must be investigated by the Police Complaints authority, so that police can be make accountable for their acts.³³⁵

5.8 Amendment in the Criminal Law: Legal Development

With the passage of time, the law also changed with the need of time, the same has happened with criminal procedure code where powers of the police related to arrest the person has reformed where importance has been given to rights of the accused.

5.8.1 Criminal Law (Amendment) Act, 1983: after the Mathura rape case, there was huge cry for the offences committed by police in jail, whereas they are the protector of the society. In section 376 of the IPC deal with rape, new provision 376(2) has been inserted which criminalize the offence of rape committed by police officer in police

³³³ 21st Law commission of India (2015 to 2018), Available at, <http://pib.nic.in/newsite/PrintRelease.aspx?relid=12674>, last seen on 20/4/17.

³³⁴ Committee on Reforms of Criminal Justice System, Report VOLUME I, 2003

Available at,

http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf,

³³⁵ Supra 47.

custody, or if it is committed in jail on a women, there will be punishment for 10 years. In case of a death of person in custody, judiciary inquiry must be conducted under section 176 of criminal procedure code.

5.8.2 Code of Criminal Procedure (Amendment) Act, 2005: it amended section 176 of Cr.P.C. further the judicial inquiry must be done in case of rape, death, if arrested person disappear from the custody³³⁶ in 2006, the bill was introduced in the Lok Sabha to prevent the degrading practices of police in the custody, but it didn't pass yet.³³⁷

5.8.3 The Code of Criminal Procedure (Amendment), Act, 2008: it has changed many provisions in which safeguard the rights of the arrested person and protect him/her from the custodial torture.

- Power of arrest is very wide in nature, it is important to curb it; this amendment is curbing the power of arrest, they inserted the new section Insertion of new section; 41A notice of appearance before police officer, 41B procedure of arrest and duties of officer making arrest, 41C Section 43C: control room at district, 41D right of arrested person to meet an advocate of his choice during interrogation³³⁸ it will protect the rights of the arrestee and
- Protection of women in custody: in case there is rape, the trial of the case will be presided by lady judge.³³⁹
- 3, Victims Compensation: victim must be compensated under section 357A³⁴⁰ and under s.372³⁴¹ victim has right to appeal for the order of lesser punishment or for inadequate compensation.

³³⁶ S.176, Criminal Procedure Code 1973: which amended section-176 of Cr.P.C, 1973 and inserted in its sub-section (1), the words “ where any person dies while in the custody of the police replaced with a new sub-section, “ (1A) where (a) any person dies or disappears, or (b) rape is alleged to have been committed on any women while such person or women is in the custody of police or in any other custody authorized by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as case may be, within whose local jurisdiction the offence has been committed.”

³³⁷ Anti-Torture Bill 2006(pending): has drafted and introduced in the fourteenth Lok Sabha (Lower House of Parliament) by Shri Mohan Singh, Member of Parliament. The Custodial Crimes (Prevention, Protection And Compensation) Bill -2006 (Lok Sabha Bill No. 63 Of 2006, 26th July, 2006) seeks to provide prevention and protection against custodial crimes, for compensation in cases of custodial offences, for appointment of vigilance Commissioner and District Vigilance Commissioners for Custodial offences. However, the Bill could not be passed by the Parliament.

³³⁸ The Code of Criminal Procedure (Amendment) Act, 2008, Act No. 5 Of 2009, <http://voice4india.org/wp-content/uploads/2013/05/THE-CODE-OF-CRIMINAL-PROCEDURE-AMENDMENT-ACT-2008.pdf>, last seen on 19/4/17.

³³⁹S.327(2), The Code of Criminal Procedure (Amendment), Act, 2008:Relating to camera trial under Sec.327(2), a new proviso has been added to state that Camera trial shall be conducted as far as practicable by a woman judge or magistrate.

Chapter 6

Judicial Measures: Role of Judiciary in Tackling the Custodial Torture

Judiciary plays a vital role to protect the fundamental rights as well as human rights of citizens. The supreme court of India has passed extensive judgments to protect the accused as well as convicts from any kind of custodial violence. The apex court act extremely vigilant against any kind of atrocities, maltreatment or violence inflicted upon the victim of torture though the executive and legislature sometimes fail to overcome the problem of custodial torture in certain cases but in such cases judiciary plays a role of savior to address the problem. Indian judiciary as always been sensible, proactive, time and fair by adjudicating the matter related to violations of human rights in custody.

6.1 Judicial Pronouncements on Arrest and Detention

There has been a constant violation of human rights in the police custody. Extensive powers of arrest are given under the Code of Criminal Procedure. There are many cases which discussed the misuse of police power which resulted into death, rape and torture in the custody. Article 21 of the Constitution rescues the accused from illegal arrest and detention. The Supreme Court of India ensures the protection to constitutional provisions and observed that our Constitution is a unique document. It is not a mere dull legal text but it represents certain human values, appreciates principles and spiritual norms and recognizes the dignity of man. Individual is the central point of the constitution and all development, moral, spiritual and material is the chief concern of its various provisions. It doesn't consider him as a component but it focuses on the development of the overall personality of the person. All these provision ensure the human dignity and rule of law strengthens the life and forces to them.³⁴² Torture is inflicted by the Police, so to protect

³⁴⁰S.357 A, The Code of Criminal Procedure (Amendment), Act, 2008: Newly inserted section 357A incorporates a newly introduced Victim Compensation Scheme in order to alleviate the sufferings of the victim and to provide important safeguards to their Right.

³⁴¹ S.372, The Code of Criminal Procedure (Amendment), Act, 2008: Amendment to Sec.372 provides that the victim shall have a Right to Appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation.

³⁴² A.K. Roy v. Union of India, AIR1982 SC 1325.

the people from unlawful arrest and torture, while using the power of judicial activism; some guidelines are given by the Supreme Court under different case laws.

6.1.1 Guidelines for arrest/ detention

Detention means to seize the right to life and dignity of a person. Our constitution as well as international instrument protects the human rights, India is a signatory to the universal declaration of human rights which protects, preserve the human rights and dignity of human being. But, custodial crime by the protector of the law is cut clear violations of the human rights. Though India is a playing an essential very role in the protection of human rights, it has also enacted a Human Rights Act in 1993. Commission has been setup to keep check on the violations of human rights.

Joginder Kumar v state of Utter Pradesh ³⁴³

Facts of the case: The petitioner is a young man of 28 years of age who has completed his LL.B. and has enrolled himself as an advocate filed a writ petition of Habeas Corpus under article 32 of the constitution. The petitioner was called by the SSP of Ghaziabad on 7th January to conduct certain inquiries in a case. He appeared personally along with his brother at around 10 am in Ghazibad Police station. The brother of the petitioner tries to enquire about the petitioner and then he was told that the petitioner will be released in the evening after conducting some necessary enquiries. On 8th January 1994, the police informed his brother that the petitioner is further detained to make some others enquiries. On the next day, the brother and some other relative went to Station Head officer P.S. Mussoorie and enquired about the petitioner. They were told that he was taken to some unknown destination for further enquiry. On 11 January court ordered the state of U.P. and SSP Ghazibad to appear before the court along with the petitioner on 14 January 1994.

In its decision, The Supreme Court has set 4 guidelines that are to be followed by the police during arrest and it is the duty of the magistrate to look that these requirements have been met, These guidelines are:-Arrested person has a right to make inform anyone either friend or relative about his arrest or any other person who has interest in him, The

³⁴³ Joginder kumar v. State of Utter Pradesh ,AIR 1994 SC 1349.

officer shall inform the persona about such arrest, The name of the person must be entering into the case dairy to which information of arrest has been given, The reason of arrest must be mentioned in the case dairy for the records.

6.1.2 Guidelines for pre arrest, after arrest and rights of accused

There are many judgments of the Supreme Court which reveal the violation of human rights in the custody while giving landmark judgments on torture and also held it unconstitutional. Many reports and commissions have been set-up to give reports on human rights violation in the police custody, analyses the unlimited power of the police, and human rights violation of accused. The Supreme Court directed some guidelines applicable to whole India.

D.K. Basu v State of West Bengal³⁴⁴

In this case, on 26th August, 1989, the Executive Chairman of legal aid service, West Bangal addressed a latter to Chief Justice of India to draw his intention on the news published on 20 and 21 July of 1986 and on 17th August 1986 regarding deaths in police lock-ups and custody. The latter was taken as public interest litigation by the court.

The Supreme Court has expressed its concern on commission of crimes during investigation and interrogation by the Police. It also laid down certain principles to be followed by the concerned Police officer. Failure to comply with these requirements will be turn into contempt of the court and case will be initiated in any high court having jurisdiction of the matter. It is a historic decision which has given the custodial Jurisprudence to India. Guidelines are as follow:

- *Identification of the officer:* The police officer, who is handling the matter of arrest and interrogation of the arrestee, should bear clear identification and name tag with designation. All particulars regarding such police officer must be kept in the record.
- *Memo of arrest:* The police officer will prepare a memo of arrest and it must be attested by at least one witness of the family member or any person of his locality. It should also be countersigned by the arrestee with name, place and date of such arrest.

³⁴⁴ D.K. Basu v. State of West Bengal ,18 December 1994.

- *Inform to his relatives:* The Arrested person has a right to inform anyone about his arrest, interrogation or in case lock-ups, either to friend or relative about his arrest or any other person who has interest in him.
- *Venue of the custody:* The time, place, date must be notified to the arrestee.
- *Make him aware about the rights:* Arrestee must inform that he has certain rights available as soon he is put under arrest.
- *Detail of arrestee friends/relative:* Names of the all the informed people, friends /relative, must be kept in the records.
- *Records of his body:* the proper detail of all major and minor injuries on his body must be recorded. The inspection memo must be signed by both, arrestee and police officer.
- *Medical examination:* arrestee must be examined by the trained doctor within 48 hours after his arrest.
- *Send the records to the magistrate:* memo of arrest and copies of all documents must be send to the local Magistrate for his records.
- *Meet the lawyer:* Arrestee can meet his lawyer during interrogation not throughout the interrogation.
- *Availability of the control room:* in all states and district headquarter police control room should be provided who will communicate the information regarding the arrest of the person within 12 hours and it must be demonstrate on a eye-catching notice board at the police control room.

6.1.3 Guidelines to Set-up Police administration

Police is a central agency in the criminal justice system. Police is set-up to protect the interest of citizen not to harm them. Modern civilization cannot sustain without the Maintenance of order and safety in the state. To maintain peace and order is one of the most important functions of the police. Maintenance of order involves punishment to the offenders and protection to the victims of crime. It is only possible when the set-up of the police is adequate, transparent and accountable. To set-up well organized police, the Supreme Court has given guidelines:

Prakash Singh and others v Union on India³⁴⁵

As per the facts of the case, two petitioners who were retired IPS officers had alleged that current misrepresentations and irregularity in the functioning of the Police. The entire Police Structure and organization of the Police is based on the Police Act of 1861, which is outdated and it is not as per the present requirement of the country. They mentioned various committees that have recommended replacing this Act according to Present Model Police Bill. The apex court laid down certain directions in the urgent need for the protection and strengthening of the Rule of Law of the Country in regard to police reforms.

The Supreme Court has given certain directions as given its earlier decision in Vineet Narayan v. Union of India³⁴⁶

- The state government is directed to constitute a State Security Commission and it will be supervised by the Chief Minister, Home Minister and DJP. They will keep on check that there should not be un-necessary burden from the State government on State Police.
- There should be fixed tenure of the DJP as well as of the IG,
- To ensure speedy investigation, it is important to separate the Investigation wing from the law and order wing.
- Each state must have Police Establishment Board to decide all transfer, positions, promotions and other services of the police not below the rank of Dy.S.P.
- At every District level, Police complaint authority should be established to look into complaints against police officers up to the rank of Dy.S.P.
- Set up National security commission at the Center level. This commission will make selection and placements of chiefs of the central police organizations.

The Supreme Court emphasized that; these directions shall be binding on all, Includes the Central, State Governments, and Union territories on or before 31st December 2006. After this judgment expert committee was appointed and it recommended drafting a New Model Police Act, on 30th October, 2006. A copy of draft model police act as framed by the committee was forwarded to state government for consideration and appropriate

³⁴⁵ Prakash Singh and others v. Union on India (2006) 8 S.C.C.

³⁴⁶ Vineet Narayan v. Union of India (1981) 1 S.C.C. 226. See also, Prof. N.V. Paranjape, Criminology & Penology with Victimology 414(2016).

action was taken by Home secretary on 31st October 2006. As per information available, so far 17 States included Assam, Bihar, Chhatisgarh, Gujarat, Haryana, Himchal Pradesh, Kerala, Karanataka, Maharashtra, Meghalaya, Mizoram, Rajasthan, Sikkim, Tamil Nadu, Tripura & Uttarakhand have either enacted the Police Act or amended the existing Act.³⁴⁷ The Punjab police act, 2007(Punjab act no.10 of 2008) received its assent from the Governor of Punjab on 24th January 2008.³⁴⁸

1.3 Guidelines on Fair and Speedy investigation

Fair and speedy investigation of the case is the backbone of Justice System because Justice delayed is justice denied. The criminal procedure code provides that accused in pre-trial detention shall be released if they have served half of the maximum sentence prescribed for the offence, for which they are charged. Many Prison inmates are awaiting trial and have already spent years in Prison. If an accused is detained in Prison for such a long time, which is even more than the maximum imprisonment provided under the law, for the offence committed by him. It is again a custodial torture.

Gauri Shanker Sharma v state of U.P.³⁴⁹

In this case, three police personal were charged for the murder of deceased named Ram Dhiraj Tiwari, who was beaten in the police station and died later in the custody. Medical examination report showed 28 injuries on his body. Police officer was charged under section 218/ 34³⁵⁰, 220³⁵¹, 304³⁵², 330,³⁵³ of the IPC.

³⁴⁷ Government of Indian Ministry of Home Affairs, *Lok Sabha Unstarred Questions no. 2316 to be answered on the 4th August*, available at, <http://mha1.nic.in/par2013/par2015-pdfs/ls-040815/2316.pdf>, last seen on, 29/3/17

³⁴⁸ <http://www.batalapolice.com/pact2007.pdf>, last seen on 15/4/17.

³⁴⁹ *Gauri Shanker Sharma v state of U.P.*, AIR 1990 SC 709.

³⁵⁰S. 218, Indian Penal Code: Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

³⁵¹S. 220 Indian Penal Code: Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.

³⁵²S. 304, Indian Penal Code: Punishment for culpable homicide not amounting to murder.

³⁵³ S.330, Indian Penal Code: Voluntarily causing hurt to extort confession, or to compel restoration of property.—Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from 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

Shivappa v State of Karnataka³⁵⁴

In this case, the relationship of husband and wife was abusive. Husband offended his wife many times for having illicit relationship with Pujari and doctor. Once, he went to Pujari and doctor places and abused them. His wife with Pujari, doctor planned to kill him and throw his body near the road which will show that he has died because of rash negligence. During investigation police didn't not receive any evidence, suddenly his wife made a confession about the crime, police send her to magistrate to register her confession. Trial court convicted her under section 302 of IPC, High court rely on the trial court and dismissed the appeal. The Supreme Court accept her appeal and held that Confession in the immediate presence of the Magistrate is not admissible under section 26 of the Evidence Act unless it is recorded and does not seem to be very sound. In this case, confession was influenced by the police and was not the word of appellant.³⁵⁵

6.3 Judiciary on Harassment and Ill- Treatment in Custody

The constitution of India, under Article 21 protects the person who is in jail from the ill-treatment and any kind of torture. The court can intervene in case of violence and prohibition of their rights. Any punishment which is too cruel or tortures some is unconstitutional.³⁵⁶ Any form of torture and cruel, inhuman or degrading treatment would be offensive to human dignity and constitute inroad in to this right to live and it would, on this view, be prohibited by article 21 of the constitution unless it is in accordance with procedure prescribed by the law, but no law which authorizes and no procedure which leads to such torture or cruel, in human or degrading treatment can ever stand the test of reasonableness and arbitrariness: it would plainly be un-constitutional and void as being violative of article 14 and 21 of the constitution.³⁵⁷

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

³⁵⁴ Shivappa v. State of Karnatka AIR 1995 SC 980, 1995 SCC (2) 76, available at, <https://indiankanoon.org/doc/747496/>, last seen on 12/3/17.

³⁵⁵ *Prisoners Rights*, Vol. 2, 126-131 (2011), available at, <http://www.hrln.org/hrln/images/stories/pdf/prisoners%20rights%20volume%20ii.pdf>, last visit on 22/4/17.

³⁵⁶ Inderjeet v. state of U.P., AIR 1797 SC 1867.

³⁵⁷ Dr. Subhash C. Kashyap, *Constructional Law of India*, Volume 1, 618 (2nd ed.2015)

Sunil Batra (1) v Delhi Administration³⁵⁸

In this case petitioner challenged the solitary confinement; he contended that section 30(2)³⁵⁹ of the prison act does not authorize the jail to keep the person in solitary. It is the clear violation of article 14 and article 21 of the constitution. Solitary confinement is punishment which can be imposed by the court only³⁶⁰. It also prohibits the practice of using bar fetters for under trials, in which justice Krishna Iyer observed that human rights are available to each and every person to prisoner as well. Even, if he is under death sentence, human rights are not negotiable at any cost.

Raghubir Singh v State of Haryana³⁶¹

In this case petitioner (sub-inspector) arrested the person on the suspect of theft, due to severe beating it results to the death of the person in the police custody. Medical examination report revealed that death happened because of asphyxiation. The session court and high court rejected his plea that suspect died because of suicide. Sub- inspector was charged with imprisonment of life. His petition was dismissed by Justice Krishna Iyer. The court observed that a scar given by police torture shows us the shameful act of the guardian of the society. It infringes the human rights and also causes danger to the live and freedom of a person The Supreme Court observes that police torture is leave horrible scars on the mind of accused. It put their life under danger because the protector of law is behind it.

6.4 Judicial verdict on treatment of women in Custody

Women are the vulnerable group in our society. They need special care and protection in case they are fall under the custody of the police. Women become the victim of rape and sexual harassment in the police custody. After the case of Mathura rape case³⁶², where girl was raped in the police station by two constables who arose the question of protection of women in the police custody in the case. There is a need to make prison

³⁵⁸ Sunil Batra (1) v. Delhi Administration, AIR 1978 SC 1575.

³⁵⁹ S. 30(2), The Prison Act: this does not empower the prison authority to impose solitary confinement upon a prisoner undersentence of death. Even jail discipline inhibits solitary confinement as a measure of jail punishment.

³⁶⁰ Ss. 73 & 74, Indian Penal Code, 1860.

³⁶¹ Raghubir Singh v. State of Haryana, AIR 1980 SC 1088.

³⁶² Tuka Ram v. State Maharashtra on 15 September, 1978

environment safe for women as recommended in committee on woman empowerment in 2002- 2003.³⁶³

Sheela Barse v state of Maharashtra³⁶⁴

Sheela Barse send a letter to the Supreme Court and it turned into writ petition. She is a journalist and while her visits to take interview of 15 women out them 4 told her that they were tortured and assaulted by the police. The court directed the Maharashtra police superintend of prison to give answer on this petition and at same time court directed the Dr (Miss) A.R. Deasi³⁶⁵ to visit in the Bombay jail and interview them. After interviewing the women, it was traced that this is a common practice in the jail. To reform The Supreme Court these directions:

- Female suspect should be kept in the separate lock up from the male,
- Only female constable should be guarded at the place of detained female, Interrogation must be done by the female officers only,
- Suspect must inform the reason of such arrest and where she has kept, Suspect has right to inform about arrest to any person of the family or to any friend,
- Intimidation of the arrest of a lady must be informed to the nearest legal aid committee, Surprise visit must be made to lock-ups with a view to providing arrested person an opportunity to hear their grievances and ascertain the condition of police lock-ups,
- Magistrate must ensure that whether she has any complaint of torture or mal-treatment in the police custody.

Mehboob Batcha and Others v. State Rep. by Superintendent of Police³⁶⁶

In this case, the police arrested the one person on the suspicion of theft and he was kept in the custody for 3 days and was beaten brutally which resulted into the death of the person. His wife Padmini was called to police station and was raped by the Police

³⁶³13th Report, Committee on Woman Empowerment in 2002- 2003, available at, <http://164.100.24.208/ls/committeer/empowerment/13.pdf>, last seen on 5/4/17.

³⁶⁴ Sheela Barse v.state of Maharashtra, AIR 1983 SC 378.

³⁶⁵ Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, was appointed to visit Central Jail and interview women prisoners.

³⁶⁶Mehboob Batcha and Others v. State Rep. by Superintendent of Police, (2011) 3 SCC 1091.

personals. The medical report of the Padmini shows that there were scars of nail starches scares on her breast and chemical analysis of her vaginal smear showed plenty of pus cells and epithelial cells. The court observed that, crime against women is a social crime and it put the whole society into stigma. In this case, victim was treated very harshly by the police and calls for no mercy to the accused.

Bhagwan Singh v state of Punjab³⁶⁷

ASI (appellant) and other three constables to went to a hotel in Amritsar to bring the deceased for interrogation in the case of narcotic drugs smuggler. They beaten the deceased in the lock-up, and they kept him there for two days after that he died and his dead body was thrown in the river. Trial court convicted four of them; they approached to High Court, where High Court convicted the ASI for two years of rigorous imprisonment and with fine of 2000 rupees under section 302/34 of IPC for killing the person in the custody. One of the constable who was guard waiting outside the hotel when they brought the deceased to police station, was set free and other two were held guilty for the same offence. Supreme Court dismissed their appeal and agreed with the decision of Punjab and Haryana High court.

Munshi Singh Gautam & others v State of Madhya Pradesh³⁶⁸

The deceased named Shambu Tyegi was brought to the police station where he was beaten very badly by the police and hence died, after that they thrown his dead body in the Nala, just to get protected from the charges of custodial death. One person informed the police about the dead body, police reached at the spot and they prepared a report that the death occurred because the person was highly intoxicated. There was no evidence available against the police and it was so complicated to solve the case. The Superintendent wrote a letter to the magistrate to get it investigated by CID. After the investigation, the trial court found them guilty for the murder under section 304,330,201 of the IPC and sentencing them to rigorous imprisonment. They filed an appeal to the high court and it was dismissed while observing that Custodial death is the direct evidence of the torture caused by the police personnel. Supreme Court disposed off the appeal of the appellant.

³⁶⁷ Bhagwan Singh v. state of Punjab ,AIR 1992 3 SCC 249.

³⁶⁸ Munshi Singh Gautam & others v. State of Madhya Pradesh AIR 2005 SC 631.

The 135th law commission report has recommended that a section 114(b) should be inserted in the Indian Evidence act, 1872 that it will be presume that injuries sustained to person during Police custody.³⁶⁹ It must be caused by the police only. This step will not only curb the crime but also such crimes do not go unpunished.

6.5 Custodial torture against Juvenile

The Juvenile Justice (Care and Protection) Act, 2000 was in spite of the fact that a positive stride taken by the Indian lawmaking body towards securing the privileges of adolescents in care of the police or an investigative expert, yet the qualities of the Act have neglected to guarantee the insurance of adolescent offenders. In case of child is locking up in the custody, he must be kept in the rehabilitation center where he can reform himself, he must not be kept with adult in lock-ups because it will lead to sexual and other form of exploitation.³⁷⁰ In *Sanat Kumar Sinha v. the State of Bihar*³⁷¹ the Bihar High Court was stunned by the awful condition of adolescents grieving in prison for a long time. Condemning the woeful indifference of the State, the Court requested to check the allegation in specific cases and their discharge from guardianship. Trials of adolescents, the Court watched, for the most part should be finished in one year. The Court additionally recommended that the adolescents in this way discharged ought to be put into legitimate schools at Government cost. The Court additionally framed a Committee to visit the establishments and present a report.

Sheela Barse v Union of India and Others³⁷²

The Supreme Court held state must:

- Ensure that children are not abused in the jails,
- Children below 16 years of age are not kept in Jail,

³⁶⁹ 113th The Law commission Report, Injuries in Police Custody, Para 5.2, (1994), also as available at, <http://lawcommissionofindia.nic.in/101-169/Report113.pdf>, last seen on 16/4/17.

³⁷⁰ *Munna v. State*, (1982)1 SCC 545.

³⁷¹ *Sanat Kumar Sinha v. the State of Bihar*, (1989 Patna LJR 1024), available at, file:///C:/Users/HP/Desktop/Jesus%20Final%20Chapters/prisoners%20rights%20volume%20ii.pdf, p.325-26.

³⁷² *Sheela Barse v. Union of India and Others* AIR1986 SC 1773.

- Cases of the juvenile must be heard by the Juvenile court not by the normal criminal court,
- Ensure that cases must be disposed off within three months if the crime is punishable with imprisonment of more than seven years,
- They must not be exposed to the custodial torture because such things will harm the children and society as well.

Sunjay Suri v Delhi Administration³⁷³ Court held that, it must be ensured by Every magistrate while authorizing the warrant for detention of prisoners, it must specify the age of the person to be detained.

6.6 Unhygienic condition in Lock-ups

The privilege to life and freedom is likewise covering the privilege to perfect and sound condition which includes clean and healthy environment. If there is death in the custody and a person dies because of the unhygienic condition of the jail, it will amount to custodial death and it makes the police official liable for the prosecution.

Indu Jain v state of M.P. and others³⁷⁴

In this case, the arrested person was kept in a special police establishment in Bhopal, the condition of the room was not well, there was no window for breathing and the deceased was a patient of asthma, due to this he got died. It is found by the trial court that, it shows the inhuman act of the police in the custody. The police who was responsible to take care of the health of the suspect as criminal procedure code provision says. As per report submitted by one senior scientist of mobile unit that the place is completely unsuitable to keep the person, the reason of the death is the unsuitable place for the custody of the asthma patient, this torture him mentally by which the deceased lost his life and wrong done was changed under section 320 and 304 of the Indian penal code, and the petition was dismissed by the High Court. The appeal made to Supreme Court was also dismissed.

³⁷³ Sunjay Suri v. Delhi Administration, AIR 1988 SC 414.

³⁷⁴ Indu Jain v. state of M.P. and others, AIR 2009 SC 976.

6.7 Privilege against self-incrimination

In the Indian setting, Clause (3) of Art. 20 of the Constitution of India ensure an essential appropriate against self implication. Article 21 concedes a further central ideal to life and freedom and states that the freedom of a man can't be taken away with the exception of methodology set around the law.

Nadini Satpathy v P.L.Dhani³⁷⁵ in this case superintendent of the police complained to the judicial magistrate against the Chief Minister of Orissa named Nandini Satpathy. In this case article 20(3) was discussed in detail which is supported by the section 160(2) of the criminal code. It is upheld that if there is any mode of pressure, crude, mental or physical, direct and indirect, but sufficiently ample, applied by the police in obtaining information from the accused, it becomes forced evidence against such violation.

6.8 Bail and Remand

Bail is very important to save the personal liberty of an individual which ensure the individual to get an opportunity before conviction. Bail safeguard the release of a person from prison awaiting trial or an appeal, by the store of security to guarantee his accommodation submission at the required time to legal authority. Sections 436 to 450 of the Criminal Procedure Code set out the conditions for the grant of bail and bonds in criminal cases. The measure of security that will be paid to secure his discharge has not been said in the Cr.P.C. Hence, it is the discretion of the court to put a monetary limit on the bond.

Moti Ram v. State of A. P.³⁷⁶

Supreme Court observed that right to get bail should not be denied indigent. In Common cause's registered society v union of India,³⁷⁷ The Supreme Court treated the long pendency of cases and following imprisonment itself an engine of oppression and issued several directions for release on bail the diverse categories of under trials.

³⁷⁵ Nadini Satpati v. P.L.Dhani , AIR 1978 SCC 1075.

³⁷⁶ Moti Ram v. State of A. P ,AIR 1978 SC 1594.

³⁷⁷Court on its own motion v. Union on India and others, (2011) 1 SCC 694.

Sheela Barse v. State of Maharashtra³⁷⁸

Right of bail by justice Bhagwati held that the benefit of bail is always taken by non-poor people but the poor people is still away from this benefit, the amount of bond is so unrealistically excessive. It is quite difficult for the poor people to pay huge amount as fixed by the court and becomes difficult for poor to arrange such sureties.

Judiciary through various creative pronouncement evolved custodial jurisprudence in dealing with custody. All crimes on police custody, it includes arbitrary arrest and detention, dehumanizing methods of interrogation or torture in custody, compensation to the victim of custodial crimes and prosecutions and punishments. The Supreme Court has observed that it may be legitimate right of any police to interrogate or arrest any suspect for some believable material but such arrest must be in accordance with the law and the interrogation does not mean causing injuries to the suspect. Because he is suspect only not guilty of the crime. Using third degree torture and torture is of very cruel nature.

6.9 Emerging Trend of Judiciary: Compensation to Victims of Custodial Torture

Victimology is the science which makes the victim the centre of study and aims at intensive understanding of the victim- offender relationship, examines the ways and means to protect the victim causation, examines the ways and means to protect the victim before commission of the crime during investigation and trials of the offender and also analyses restitution and reparation of the damages caused to him by perpetration of crime³⁷⁹. The aspect of compensation to prisoners was acknowledged and introduced the world over by the International Covenant on Civil and Political Rights in 1976

Award of compensation for established infringement is given under article 21 of the constitution which states that remedy is available in public law since the purpose of public law is not only to civilize public power but also to assure the citizens that they live under a legal system wherein their rights and interest shall be protected and preserved.³⁸⁰

Grant of compensation in proceeding under article 32 and article 226 of the constitution for the established violation of the fundamental rights guaranteed under article 21 is an

³⁷⁸ Sheela Barse v. State of Maharashtra 1983 SCC 96.

³⁷⁹ R.C.Dikshit, *Police: The human Face*, 243(2000).

³⁸⁰ A. G. Noorani, *Accountability for Torture*, Vol. 34, No. 45 (Nov. 6-12, 1999), Economic and Political Weekly, 3160(1999).

exercise of the courts under the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the state which failed in the discharge of its public duty to protect the fundamental rights of the citizens.

In case of custodial torture mere finding the invalidity of the law what there is violence in the lock-up or death has occurred and the person who is affected by such an act must be protected and Monetary help can be the best for that.³⁸¹

Khatri v State of Bihar³⁸²

It was the first time when the Supreme Court considers about compensation to those who got affected by the law itself. Justice Bhagwati observe that, “*Why should the court not be prepared to sham new tools, device ,and new remedies for the purpose of justify the most precious of the precious, fundamental rights to life and personal liberty.*”

Rudal Shah V State of Bihar³⁸³

This case brought new revolutionary break in the jurisprudence of Human rights when acted upon the lawless act of the Bihar government by paying monetary compensation to the person who was detained in the jail for fourteen years even after his acquittal. Court held that refusal to pay compensation to this person will prove that to protect fundamental rights to liberty is just a mere words written in somewhere with no importance. “*The refusal of this Court to pass an order of compensation in favor of the petitioner will be doing mere lip-service to jus Fundamental Right to liberty which the State Government has so grossly violated.*”

Nilabeti Bahera v State of Orissa and Others³⁸⁴

The Supreme Court directed that this is the responsibility of the state to give compensation to the victim and their heirs if there is violation of human rights by the official of the government, State also has right to recover the amount of compensation from such official who violated the rights of the victim, If the compensation is given

³⁸¹ Dr.S.K.Awasthi (Advocate, Supreme Court) R.K.Kataria B.A.,LLB., *Law Relating to Protection of human rights*,
837(Revised Reprint 2003)

³⁸² Khatri v. State of Bihar, AIR 1981 SC 1068.

³⁸³ Rudal Shah v. State of Bihar, AIR 1983 SC 1086.

³⁸⁴ Nilabeti Bahera v. State of Orissa and Others, AIR 1993 SC 1960.

under criminal case, it does not prevent the victim or their heirs to claim compensation in civil cases.

Sakshi Sharma and others v. state of Himachal Pradesh and others³⁸⁵

In this case, Himachal Pradesh high court has granted Rupees 15, 60,000 to the victim and also given direction to suspend the police officials from the post for his brutal act. It was directed that CJM and SDM will visit to Police stations and submit their report of visit to Session judge who will consider and take action against those who violated the constitutional provision.

Dr. Mehmood Nayyar Azam v. State of Chhattisgarh and Others³⁸⁶

The court held that that Judiciary is work as watchdog which protects the rights under constitutional or statutory provision. It also ensures that interrogation, arrest, pre and post trial custody must be according to the law. Compensation in the case of violation, awarded against the wrongdoer for the breach of its public law duty and rights are available to the aggrieved person to claim compensation in the case of such violation.

Serajudin Ansari v. The home secretary³⁸⁷

A person was acquitted by Trial court after 15 years of life in the jail without punishment. Innocent suffered incarceration because of failure on the part of government. Writ of habeas corpus was filed under article 32 of the constitution to pay compensation to the person.

In the end, The Supreme Court of India has advanced the Right to Compensation to prisoners by declaring it to be a fundamental right under Article 21 of the Constitution of India. Hence a prisoner can approach the Supreme Court under Article 32 and claim for compensation for the violation of his rights while in custody of the police or a prison setting. Law commission also commended to pay Ex-gratia payment³⁸⁸ in case of violation of human rights of accused.

³⁸⁵ Sakshi Sharma and others v. state of Himachal Pradesh and others, CWPN . 3684 of 2009.

³⁸⁶ Dr. Mehmood Nayyar Azam v State of Chhattisgarh and Others,(2012) 8 SCR 65.

³⁸⁷ Serajudin Ansari v.The home secretary, 1999(2) BLJ 256 at 256(Pat.).

³⁸⁸ 152nd Law Commission Report, *Custodial Crimes* , Para 1.7(1994).

Chapter 7

Conclusion and Suggestions

The act of torture not only violates the dignity of human rights but also damages the ability of victim to carry on their life and other activities. Torture and violation of human rights is not only in India, it is prevailing all over the world. Victim of torture includes woman, men, young and the elders, the wealthy and the poor; in short, all social classes, denomination, groups and culture experience the torture and other human right abuses. The principle of human rights is mentioned in the universal declaration of human rights and the charter of human rights. It states that recognition of the inherent dignity and other equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

7.1 Conclusion

By virtue of the law, the police is authorized and empowered to arrest the accused/suspect and put them behind the bars, but it is not mentioned anywhere to make them the subject of torture. Being an under- trial does not eliminate the basic rights of a human being.

In democracy, the police are visible symbol of the authority of the government and are expected to protect the interest of the society and individual rights. The police have a very important role to play in the setup of the government. The police are supposed to protect the people and uphold the law, but if they themselves become criminals, then it ends of the civilized society. The basic and fundamental problem regarding the police is that how to make it function as an efficient and impartial body. It gives birth to the question of accountability of the police. Police personals are behaving in such a way that reminds us of the days of the *Mughals* when thugs and *Pindaris* were looting the public and terrorizing them in many ways. The police are made-up to protect the people not to torture, rape, blackmail or loot them.³⁸⁹

At present, Police system and policing progresses are very slow which is leading to injustice. With a view to protect the interest of innocent and prevent the abuse and misuse

³⁸⁹ Ram Palta Kannaujia v. State of U.P., 2001 Cri. Lj 2887 at pp. 2887,2888.

of police powers, the Supreme Court has enlarged the scope of Article 21 of the Constitution and it added the right of accused and suspect. Still, the cases of custodial torture and third degree upon under-trials are an integrals part of investigation. Supreme Court held that there is prominent immunity against torture and deaths in police custody to the status of fundamental rights under Article 21 of the constitution.

7.1.1 Factors Responsible for Custodial torture

At the time of the British rule in India, police were used to suppressed and torture the weak in the name of maintaining law and order and administration in the state. Even after the independence, they followed the same mindset to tackle the situations of law and order in the state,³⁹⁰ The Sub-culture of the police³⁹¹ is same as it was at the time of Britishers. The Police Act 1861 which was enacted centuries ago. It is still in the existence. There is a need to re-define the character, operations, and organization of the police. The biggest problem of police originations is that there is no distinguish between investigation wing and law and order wing, the police officials are not trained to collect evidences. These Causes are:

- **Familial Cause:** The matrimonial and family relations of police officer are affecting their mental condition, which makes them rude, dis-hearted. It also effects on the development, promotion, effectiveness on the work of police personal.³⁹²
- **Social Causes:** The relation between public and police is very sore from the beginning as they generally meet in the crisis situations. There is a gap between them which result into miss-understanding. Public always presumes them cruel and exploitative.³⁹³ To make balance between the police and public, NHRC has given guidelines, so that police can gain the lost interest of the public on police.³⁹⁴

³⁹⁰ Prof. N.V. Paranjape, *Criminology & Penology with Victimology*, 387(Reprint 2016).

³⁹¹ Dr.S.K.Awasthi (Advocate, Supreme Court) R.K.Kataria B.A., LLB., *Law Relating to Protection of human right* ,887(2003).

³⁹³ A. K. Mehra, *Police in Changing India*, 20(1985).

³⁹⁴ National Human Rights Commission (NHRC) Guidelines, *Police and Public Relations*,(Dec. 22, 1999): to make police and police relations balance, the toll free number should available in all states, so that people canconvey information to police easily and number 1091 is fixed for all states. SHO should conduct inquiry every months to meet the people., available at, <http://nhrc.nic.in/Documents/sec-4.pdf>, last visit on 28/4/17.

- **Public Approval:** In some cases, the public gives an approval to the Police to use violence against the suspects. Especially when there is property cases and other related to human body. The Public compel them to act with force. Former Director General of Punjab Police, Julio Ribeiro, wrote, "methods of torture like Third-degree is approved by the public itself".³⁹⁵
- **Performance Pressure:** There is always a pressure on the police to produce a result within particular time. Police are answerable to their higher officials to preserve the law and regulate the society, if there is any case of disturbance, the first question is always on the police that why they failed to perform their duty.
- **Economic Causes:** Police system is a protective layer which helps, protects the public within the state and Army protects it from outside. It would be really sad, by giving bribery to police personal, anyone can compel them to work according to them. it prejudices the interest of the society.
- **Lack of Supervision of Lock Ups:** It is important that there should be a proper inspection of the lock- ups where the detentes are mostly kept³⁹⁶. Article 21 of the law of the land says that, if a person is in custody that does not mean that he is not a human being, because life is not a mere animal existence. It means life with dignity, and the person who is in jail has a right to live and if needed, there must be proper check-up of their food and living conditions.
- **Political intervention:** It is witnessed many times that pressure by Politicians creates an obstacle on the way of working of the police. It encourages them to use rude methods like torture and encounters to suppress their opponents. Sometimes, political parties take undue advantage of Police. Policemen are failing to fight against such culture that surrounds them.³⁹⁷
- **Psychology of police men:** Police officers always meet with criminals, thieves, run after them. They are under constant pressure of the high official to produce a result within particular time which leads them into tension and anxiety. It escorts to quarrels, immorality, lack of consideration and understanding etc. and ultimately changing them to

³⁹⁵ Julio Riberio, *Indian police: reflecting social ills*, (1995).

³⁹⁶ NHRC Annual Report (1996-97).

³⁹⁷Dr.S.K.Awasthi (Advocate, Supreme Court) R.K.Kataria B.A., LLB., *Law Relating to Protection of human rights*, 887(2003).

a delinquent police. The society also plays a major role in the life; public always take them as rude, impolite, and brutal and corrupt, which really effects their Psychology.³⁹⁸ Article 2 of the code of Conduct for law enforcement officials, 1979 of conduct provides that police is a civilian force which works for the protection of the society and it is their duty to respect and protect human rights.³⁹⁹

7.2 Suggestions

- Central and state governments should develop mechanism wherein police is allowed to perform its duty to curb crime present in any form; ensuring privileges where the right of common men are not infringed.
- *Protection of the citizen from oppression and injustice at the hands of the law-enforcement machinery:* To strike a balance between the needs of law enforcement on the one hand and the on the other is a perennial problem of statecraft.
- Police training programs⁴⁰⁰ should be placed more frequently concentrating on teaching them their ethical and moral duties. The absolute prohibition of torture and ill-treatment must be incorporated in the training of the police official and they must be ensuring to refuse to obey any order to participate in torture.
- Police officials who are suspected for involvement in torture or ill-treatment should not be allowed to associate with the investigation. The trainers should be capable and motivated to impart suitable training. They must be trained to hammer the spirit of service in the people in accordance with rule of law. They should be taught about human right during their training so that they can understand and uphold the human rights.
- *Corruption by police:* The routine correction should be left alone. Head should be made responsible for the wrong-doings of his sub-ordinate in this and allied matters may be punished for lack of vigilance. There should be check on such irregularities. Promotion in government employment and in fact in any other employment is an important that they should get incentive for good behavior.⁴⁰¹

³⁹⁸ M. Ponnian, *Human Rights and Police friend, Philosopher and Guide*, 73 (1999).

³⁹⁹ Upendra Baxi, *The crisis in the Indian legal system*, 85(1982).

⁴⁰⁰ Sankarsen, *Police Today*, 12-19(1986).

⁴⁰¹ Trilok Nath, *The Police Problem*, 97-104(1983).

- *Proper definition of torture:* Adopting special legislation in what India needs today wherein, it must include the clear definition of torture, punishment, compensation to victim and also accountability of official accused.
- *Ratification of the Conventions:* India signed United Nation convention against torture in 1977, but we failed to ratify it. India is signatory to many treaties but it didn't ratify, it is important to ratify all the treaties regarding torture including the international covenant on civil and political rights, convention against torture. It would make the India accountable to UN on torture cases that would help effectively tackle the increasing cases of torture in the country. Prevention of Torture Bill 2010 is still pending in the parliament which deals with such conditions. The right not to be torture must be mentioned clearly under the constitution. It must be prohibited and penal provision must enter in the Indian penal code. It must follow the definition of torture as mentioned under united nation Convention against Torture in Article (1)..
- *Abolish law which ensures such activities:* It must ensure to take step to abolish those laws which facilitate such acts of torture and ill-treatment while governing the arrest and detention procedure.
- *Implementation of recommendations of the law commission:* It must be ensured that Evidence Act and Criminal Procedure Code must contain those provisions which are recommended by the law commission as it is discussed in the above mentioned chapter. As recommended by many committees and Law Commission reports it is important to make a comprehensive system in the code which will cover all aspect of the custodial torture include the time or arrest, when to brought before magistrate, period of interrogation, to get check in case of marks on the body, and failure to keep a proper record must be made an offence. As recommended by National Police Commission, the Police Act 1861 must be replaced with a new Act.

Accountability of the Police: Police should be made accountable of their deeds. Police machinery should be free from political interference. As recommended by NHRC in its annual Report in 1996-97, surprise visit to police stations and other similar unit by the senior officer should be made for detection of un-authorized custody and subjected to ill-treatment. Special reporter in 2012 also recommended making independent police

complaint authority to keep an eye on the wrongful acts of the police. Requirement of section 197 of criminal procedure must be taken away in case of custodial torture and violence by the police officer. There is lack on the part of accountability on the police officers, and also lack of supervisory mechanism. The infrastructure of the police stations is very poor; there are no CCTV cameras in the premises of Police station. To remove these factors, there should be environment of co-operation in the officers.

- *Incorporation of Guidelines:* All the guidelines given by Court in *D. K. Basu v State of West Bengal*⁴⁰² should be added in the relevant provision of the law and also in the police manual. It must be published in all the languages so that everyone must be aware about the rights available to them while in the custody.
- *In case of armed conflict forces:* It must be ensured to bring the arrested person before concerned authority within 24 hours of the arrest. The information of the transfer of the detainees must be recorded and kept in the central register.
- *Duty of Magistrate:* In order to ensure safe environment for the arrested person, it is important that such complaints about torture must come before the magistrate and magistrate must ensure in the absence of the police official that whether he was tortured during the interrogation and detention. Any complaint of torture in police custody should not be taken lightly rather court should try to deal with it stringently that would rebuild trust of public in our justice delivery system.
- *Role of NHRC & NHRC:* The National Human Right Commission (NHRC) and state human right commission are given the power to investigate the allegation of human rights violation which took place in the custody on its own, receive information and compel the attendance of witnesses. All the recommendations given by the NHRC in 2000 must be complied with. The regular publication of the NHRC is generally in Hindi or English therefore it must be publish in all regional languages. Human Rights must be made compulsory in elementary education. It will enable the citizens of the country to raise voice against human rights violation and would compel the police to think before using third-degree method.

⁴⁰² D.K Basu v State of West Bengal ,AIR 1997 SC 610.

- *To encourage NGOs:* Independent human rights protection organizations have played an very important role in monitoring the cases of human rights. Such organization should be encouraged to come together and protect human rights and liberties of the citizen.
- *Compensation to Victims of Crime:* Victims of torture should be dealt with care and sympathy. Grant of compensation not only provides some relief and reward to the unfortunate victims of police torture but also serves as a preventive measure to some extent. There is no law as such which is providing such legal right to get monetary compensation, but by using the judicial activism under article 32 of the constitution, in the case of human rights violation, judiciary provides parallel constitutional remedy.
- *To make a distinction between investigating police and maintenance of law and order police:* Justice delayed is justice denied. This is more so in criminal cases where the liberty of an individual is at risk .The irony of fate is that in all such cases, it is the poor who are the victims of the criminal justice system, and not the rich who are able to get away.

7.2.1 Suggestions for Prison Justice

When a person is in judicial custody, To protect the life and liberty of the deprived: The landmark case of *Hussainara Khatoon v. State of Bihar* in 1979⁴⁰³, The difficulties of under trial prisoners for the first time came to the notice of the Supreme Court, wherein it was revealed that thousands of under trial prisoners were suffering in various jails in the State of Bihar for periods longer than the maximum term for which they could have been sentenced, if convicted. While granting a character of freedom for under trials that had virtually spent their period of sentences, the Court said their detention was clearly illegal and was in violation of their fundamental rights guaranteed under Art.21 of the Constitution of India. The court further said that speedy trial is a constitutional mandate and the State can't avoid its constitutional mandate by pleading financial or administrative inability.

- **Probation to the Offender:** It is a reformatory technique for the imprisoned offenders in prison; they can be released on probation with or without conditions and must be allowed

⁴⁰³ *Hussainara Khatoon V. Home Secretary, State of Bihar*, (1980) 1 SCC 81.

to live in the community for self-rehabilitation. Thus probation engage delay of final sentence of a convicted offender for a certain period of time so as to enable him to have an opportunity to correct his conduct & readjust himself in the community. Supreme Court in *Ramji Missar v. State of Bihar*⁴⁰⁴ observed that the purpose of probation is to stop their conversion of offender into stubborn criminals. Their association with hardened criminal of mature age makes them more isolated. Modern Criminal Jurisprudence recognizes that no one is born criminal rather crimes are the result of socio-economic environment. Although not much can be done for hardened criminals, yet a considerable emphasis has been laid on bringing about reform of juveniles who are not guilty of very serious offences by preventing their association with mature criminals.

- Parole is also known as a pre-mature release of offenders after a strict scrutiny of long term prisoners, under the rules laid down by various governments. Premature release from prison is conditional subject to his behavior in society & accepting to live under the guidance & supervision of Parole Officer. In order to prevent this situation, a corrective technique known as Parole, has been developed to provide a chance for the prisoner to rehabilitate himself in the society on a guarantee to return to prison in case he breaks the law. It is mostly given to those who spend their one third prisons in custody on a condition that he shall return to the prison to undergo the unexpired sentence in the event of misbehavior. It may available to those who show the good behavior during their imprisonment.

Custodial violence is prevailing in our society since inception. Despite several initiatives taken by the legislature and judiciary, custodial torture continues to deny human rights of hundreds of individuals. The word custody literally means guardianship and protective care therefore, practically it must not be used as place of violence and torture. In the cases of custodial torture, the courts should adopt a strict approach to it. Custodial torture has become so common that not only the police but even society take it for granted as a routine police practice of interrogation. Despite of laws and reports given by different committees, which ensure the life and liberty of a human being, the custodial torture and custodial deaths are still prevailing.

⁴⁰⁴ *Ramji Missar v. State of Bihar*, AIR 1963 SC 1088.

Undoubtedly, police works under lots of pressure and other influences, but it never gives them a right to inflict brutality on a helpless person under its custody and ignoring his inherent human rights. In a democratic country like India, it's the people and not the police who are the real masters and the sovereign power is vested with them. Therefore the protectors of law must act as protectors rather than acting as violators of law.

Annexure

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