Chapter Three
International Normative Safeguards Against Custodial Violence
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Introductory remarks
Torture has been considered as the most barbarous and heinous act against humanity as it constitute the very denial of the essence of human rights dignity and therefore it has been disapproved by all civilized socio-legal systems of the world. Ancient and medieval period saw the rise and downfall of custodial violence as a part of the criminal justice system. But from very early time states started resorting to the tool of torture as a mechanism with the changing political scenario consequential upon political & military spying, economic imbalance etc. and in such cases torture is most commonly used tool for investigation of crimes not only in India but in most of the developing and developed nations. Investigation of cases often begin with confession and ends with custodial violence. Though the method of obtaining information by coercive means is considered as worst form of crime investigation yet it is frequently and widely practiced in India and whole world.

Omission on the part of administration in preventing the use of torture by the police & other law enforcement agencies and continuous indifferent attitude of the government has considerably shaken the faith of public in law enforcement agencies. The violence in custody is an affront on human dignity which normally adversely affects the growth of the personality of an individual. Torture ruins victim mentally & physically & whenever they remember custodial agony they remain in state of perpetual terror & horror and due to this fear in their mind they probably never be able to lead a normal life again they were living previously.

Custodial violence, perhaps one of the worst crimes in a civilized society, is a matter of concern for many reasons. Custodial violence, including torture, rape & deaths in the lock-up, strikes a heavy blow at the rule of law which demands that the powers of the executive should not only be derived from law but also that should be limited by law. It is further aggravated by the fact that persons who are supposed to be protectors of citizens, themselves commit violations of human rights. These violations are

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committed under the shields of “uniform” and “authority” between the four walls of a police station, lockup & prison, where the victims are totally helpless. In a civilized country like India the safety of the people is the supreme concern of the law of the land. Here is a Latin maxim on this point i.e. “salus populi est suprema lex” means safety of the people is the supreme law. There is another maxim co-exists i.e. “Salus republicae lex” (safety of the state is the supreme law. These doctrines states that interest of the community must be reconciled with the welfare of the individual and the state despite its romantic obsession with order, essentially exists for the sake and welfare of the individual. The state must act in a manner which is right, just and fair. Any state is comprised of three bodies i.e. legislature, executive and judiciary which is presumed as pillars of democracy. As we know the legislature makes the laws, the executive enforces them and judiciary is there to resolve the dispute arising out of such process. So at this juncture it would be appropriate to examine the laws enacted for the purpose of prevention of torture at international and national level.

In order to safeguard the personal liberty and life of a person and to curb the growing incidents of torture and deaths in police custody various international instruments have been enacted. Under these instruments, states are directed not to ‘promote or tolerate’ any form of torture even in exceptional circumstances such as state of war or a threat of war or internal political instability or emergency. These international instruments clearly mandate the state parties to take effective measures to prevent all forms of torture prevalent in country. The state parties are, therefore, obliged to prevent and punish not only acts of torture but also other acts which come in purview of violence.

**Universal Declaration of Human Rights, 1948 (UDHR)**

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights drafted by state representatives with different legal and cultural background from all religions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 as a common standard of achievements for people and all nations. It sets out, for first time, fundamental human rights to be universally protected.

The United Nations Charter reaffirmed faith in fundamental human right, and dignity and worth of the human person and committed all member states to promote universal
respect and observance of human rights & fundamental freedoms for all without
distinction as to race, sex, language and religion.\textsuperscript{5}

When the atrocities committed by Nazi Germany became apparent after the second
war, the consensus within the world community was that the United Nations Charter
did not sufficiently define the rights as reference. Thus Universal Declaration that
specified the rights of individual was necessary to give effect to the Charters
provisions on human rights. Canadian John Peters Humphrey was called upon by the
United Nations Secretary-General to work on the project and became the
Declaration's Principal drafter. At that time Humphery was newly appointed as
Director of the Division of human rights within the United Nations Secretariat \textsuperscript{6}.

\textbf{Structure:}

The underlying structure of the Universal Declaration was introduced in its second
draft which was prepared by Rene Cessin. Cessin worked from first draft prepared by
John Peters Humphery. The structure was influenced by the Napoleonic Code,
including a preamble and introductory general principles. The Declaration arose
directly from the experience of the world war second and represents the first global
expression of right to which all human beings are inherently entitled. It consist 30
articles which have been elaborated in subsequent International Treaties, Regional
Human Rights Instruments, National Constitution of the country.\textsuperscript{7}

A careful reading of the ‘preamble’ to the Universal Declaration of Human Right
shows that the preamble contains the ideals & aspiration of the world community to
promote and establish human rights to all.

\textbf{Article-2} of UDHR says everyone is entitled to all the rights & freedom set forth in
this Declaration, without distinction of any kind, such as race, colour,
sex, language, religion, political or other opinion, national or social
origin, property, birth or other status. Furthermore, no distinction shall
be made on the basis of the political jurisdiction or international status of
the country or territory to which a person belongs, whether it is
independent, trust, non-self governing body or under any other limitation
of sovereignty.

Thus Article-2 specifically gives right to every person without any discrimination
being a human being.
Again Article 3 of UDHR provides that everyone has the right to life, liberty and security of person.

Article 5 of UDHR specifically deals with the provision of torture that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

These articles together lay down universal rules that being a human being right is provided to all individuals including to the accused and detainees.

Article 9 Provides that no one shall be subjected to arbitrary arrest, detention or exile.

This article assures about common man’s right that every person should be treated according to fair procedure of law. Meaning thereby no human being shall be arbitrarily arrested, detained and exiled. Everyone is subjected to fair and justifiable law which is prevailing in that country.

Article 10 Provides that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations against any criminal charge against him.

This article in essence confers on every human being that if any criminal charge is against him then he must be afforded full opportunity if being heard by an independent and impartial tribunal. The term hearing means just and fair hearing without any kind of discrimination.

Article 11 provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the rights to the protection of the law against such interference of attacks.

Article-11 Further says:

Clause (1) 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 his defense.

Clause (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was in application at the time the penal offence was committed.
Article 11 of Universal Declaration of Human Rights (UDHR) unlike Article 20(1) presumes accused innocent until he is proved guilty. This article again gives protection against ex-post facto law provided under Article 20 of Indian Constitution. That no human being accused of any offence shall be punished more than punishment prescribed under the existing local law of the land for any offence. It affords protection that every human being not to be tried for any guilt or offence which was not an offence at the time of the commission of the alleged act or omission.

Therefore it can be said that articles enunciated in the Universal Declaration of Human Right is a common standard of achievement for all people and all nations, to the extent that every individual and every organ of society shall strive by teaching and education to promote respect for human rights. Effort should be made by each state parties for the protection of the rights of accused, detainees and all human beings by recognition and observance in national law. Thus these are the some articles which directly relates to the rights of human being as an accused and detainees for the protection of their rights relating to torture, violence and detention in the country.

Significance of UDHR
The Guinness book of records describes the UDHR as the “Most Translated Document” in the world. In the preamble, governments commit themselves and their people to progressive measures which secure the universal and effective recognition and observance of the human rights set out in the Declaration. Eleanor Roosevelt supported the adoption of the UDHR as a Declaration rather than as a treaty, because she believed that it would have the some kind of influence on global society as the United States Declaration of Independence had within the United States. Even though it is not legally binding, the Declaration has been adopted in or has influenced most national constitution since 1948. It has also served as the foundation for a growing number of national laws, international laws and treaties, as well as regional, national and sub-national institutions protecting and promoting human rights.

Declaration while not a treaty itself it explicitly adopted for the purpose of defining the, meaning of words “fundamental freedoms and human rights” appearing in the United Nation Charter, which is binding on all member states. For this reason the Universal Declaration is a fundamental constitutive document of the United Nations. Many International law, in addition believe that the Declaration form a part of customary international law and is a powerful tool in applying diplomatic & moral
pressure to governments that violates any of its articles. The Declaration has served as the foundation for two binding United Nations Human Rights Covenants, the International Covenant on Civil and Political Rights and the International Convent on Economic, Social and Cultural Rights and the principle of the Declaration are elaborated in International treaties.¹⁰

**International Covenant on Civil and Political Rights**

India is party to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by general assembly resolution 2200A(XXI) of 16 December, 1966 and came into force on 23 March 1976.

The state parties to the Covenant recognize that these rights are derived from the inherent dignity of the human person and there by state are obliged under the Charter of the United Nation to promote universal respect and observance of human rights & freedom.

*Article 4* of the ICCPR provides that in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed the state parties to the Covenant may take measures derogating from their obligation as required by the exigencies of the situation, provided that such measures are not inconsistent with their obligation under International law and do not involve discrimination solely on the ground of race, colour, sex, language, religion and social origin.¹¹

*Article-6* of the ICCPR provides safeguards to the rights of accused and detainees. Clause (1) says that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Clause (2) further provides that in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime & not contrary to the provision of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.

Clause (4) Says anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or Commutation of the sentence of death may be granted in all cases.

Clause (5) Says sentence of death shall not be imposed for crime committed by person below 18 years of age and shall not be carried out on pregnant woman.¹²

*Article 7* of ICCPR specifically provides prevention against torture. It reads that;

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No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimental.

*Article-9* Speaks about right to arbitrary arrest and detention. It provides as under:

It says that everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty, except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, of his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a charge shall be brought promptly before a Judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial and shall be detained in custody, but release may be subjected to guarantees to appear for trial, at any other stage of the judicial proceedings and should occasion arise, for execution of the judgment.

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a Court, in order that Court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

*Article-10* deals with treatment with humanity.

It provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. Further accused juvenile persons shall be subjected to separate treatment from adults and brought as far as possible for adjudication.

*Article-14* of ICCPR embodies fair and public hearing by an independent impartial tribunal. It lays down that all persons shall be equal before the courts and tribunals. In the determination of any criminal charge, against him, or of his rights & obligations in a suit at law, everyone shall be entitled
to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Clause (2) and (3) of the Article 14 provides that:

- Everyone charged with a criminal charge shall have the right to be presumed innocent until proved guilty according to law.

- In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

  - To be informed promptly and in detail, in a language which he understands, of the national and cause of the charge against him;

  - To have adequate time and facilities for the preparations of his defense and to communicate with counsel of his choice;

  - To be tried without undue delay;

  - To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case, if he does not have sufficient means to pay for it;

  - To have the free assistance of an interpreter if he can't understand or speak the language used in court;

  - Not to be compelled to testify against himself or to confess guilt.

- Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

- When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

- No one shall be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of that country.
Article 15 of ICCPR seeks to provide Protection against ex-post facto law. It lays down clause by clause as under:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law at the time when it was not committed nor shall a heavier penalty be imposed that the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of lighter penalty, the offender shall be benefited thereby.

Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time it was committed, was criminal according to the general principles of law recognized by the community of nations. Thus Article 14 and 15 in sum and subsequent seeks to provide full protection to the persons accused of any offence against arbitrary arrest, prevention and conviction irrespective of his/her religious culture caste, birth of place in recognition of human rights available to the offenders, detainees and convicts. The rights enshrined under Article 14 of the ICCPR is fully in conformity with the rights of the accused persons provided under Article 20 of the Indian Constitution.

The Declaration on Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975

This Declaration was adopted by the UN General Assembly Resolution 3452 (XXX) of 9 December, 1975. The Declaration consists of 12 Articles. Some of these articles are worth noting. The Article under reference enshrines clause by clause as under:

Article 1 provides definition of torture. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or supposed of having committed or intimidating him or other person.

Article 2 provides that torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment. It is an offence to human dignity and shall be condemned as a denial of human rights
and fundamental freedoms.

Article 3 provides that no state should permit or tolerate torture or other cruel inhuman or degrading treatment or punishment. Exceptional circumstances, such as state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4 provides that each state shall in accordance with the provision of this Declaration take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practiced within its jurisdiction.

Article 6 reads that each state shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any case of torture, or other cruel inhuman or degrading treatment or punishment.

Article 7 imposes obligation that each state shall ensure that all acts of torture as defined in Article-1 are offences under its criminal law. The same shall apply in regard to acts, which constitute participation in, complicity in, incitement for or an attempt to commit torture.

Article 8 provides right of complaint. It says that any person who has been subjected to torture or other cruel inhuman degrading treatment or punishment by or at the instigation of a police official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the state concerned.

Article 9 provides impartial investigation. It says that when there is a reasonable ground to believe that an act of torture as defined in Article 1 has been committed the competent authorities of the state concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10 provides that if an investigation under Article 8 or Article 9 establishes
that an act of torture as defined in Article 1 appears to have been
committed, criminal proceedings shall be instituted against the
alleged offender or offenders in accordance with national law.\(^15\)

**Standard Minimum Rules for the Treatment of Prisoners, 1977**

The Standard Minimum Rules for the Treatment of Prisoners, 1977 was adopted by
the First United Nations Congress on the Prevention of Crime and the Treatment of
Offenders, held at Geneva in 1955, and approved by the Economic and Social Council
by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

The following rules are framed for the humane treatment of prisoners.

Part I of the rules covers the general management of institutions, and it is applicable
to all categories of prisoners, criminal or civil, untried or convicted, including
prisoners subject to "security measures" or corrective measures ordered by the judge.

Part II contains rules applicable only to the special categories. The rules under
section A, applicable to prisoners under sentence, shall be equally applicable to
categories of prisoners dealt with in sections B, C and D, provided they do not
conflict with the rules governing those categories and are for their benefit.

**Rule 6 Basic principles** - It lays down basic principles which have as below:

There shall be no discrimination on grounds of race, colour, sex, language, religion,
political or other opinion, national or social origin, property, birth or other status.\(^16\)

**Rule 30 Discipline and punishment** - Discipline and order shall be maintained with
firmness, but with no more restriction than is necessary for safe custody and well-
ordered community life. No prisoner shall be employed, in the service of the
institution, in any disciplinary capacity. This rule shall not, however, impede the
proper functioning of systems based on self-government, under which specified
social, educational or sports activities or responsibilities are entrusted, under
supervision, to prisoners who are formed into groups for the purposes of treatment.

It provides provisions related to punishments which are as under:

1. No prisoner shall be punished except in accordance with the terms of such law
   or regulation, and never be punished twice for the same offence.
(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

**Rule 31 prohibits corporal punishment**- It says that punishment by placing in a dark cell and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it. The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31. The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.¹⁷

**Rule 33 Instruments of restraint**- It provides that Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

(a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;

(b) On medical grounds by direction of the Medical Officer;

(c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the Medical Officer and report to the higher administrative authority. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.¹⁸
The United Nations Code of Conduct for Law Enforcement Officials

The United Nation Code of Conduct for Law Enforcement Officials was adopted by resolution 34/169 of the UN General Assembly on 17 December, 1979. In adopting the Code of Conduct, the General Assembly recognized that the establishment of such a code is only one of several important measures for providing the citizenry served by law enforcement officials with protection of all their rights and interests.

The Code of Conduct has eight Articles, each with an explanatory commentary. Some of these Articles deserve special mentions which are as under:

Article 2 of this Code requires law enforcement officials to respect and protect human dignity and maintain and uphold human rights. The commentary list contains various International human rights instruments relevant for law enforcement officials.

Article 3 obliges law enforcement officials to use force only when strictly necessary and to the extent required for the performance of their duty. The commentary refers to the principle of proportionality in the use of force and it stipulates that the use of force and firearms is considered as an extreme measure.

Article 6 imposes obligation on law enforcement officials to ensure full protection of the health of the persons detained in custody.

Thus we can say that these provisions together imposes a positive duty on law enforcing agencies to take care of the human rights while using force to implement law specially against person who are under custody.

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982

It was adopted by the United Nations General Assembly on 18 December 1982, in which it invited the world health organization to prepare a draft code of medical ethics relevant to the protection of person subjected to any form of detention of imprisonment against torture & other cruel, inhuman or degrading treatment or punishment.

Principle relating to prevention of torture, detention and other form of degrading punishment are as under-
Principle 1

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.

Principle 2

It is a gross contravention of medical ethics, as well as an offence under applicable International instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.

Principle 3

It is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health.

Principle 4

It is a contravention of medical ethics for health personnel, particularly physicians:

(a) To apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant International instruments;

(b) To certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or to participate
in any way in the infliction of any such treatment or punishment which is not in accordance with the relevant international instruments.

**Principle 5**

It is a contravention of medical ethics for health personnel, particularly physicians, to participate in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health.

**Principle 6**

There may be no derogation from the foregoing principles on any ground whatsoever, including public emergency.²⁰

**Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984**

This Convention was adopted and opened for signature and ratification and accession by General Assembly Resolution 29/46 of December, 1984. It was designed to make the struggle against torture more effective and to curb other cruel, inhuman or degrading treatment or punishment throughout the world.

**Article 1** of this Convention provides definition of torture, which is as under: "Torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him.

**Article 2** further provides that:

(i) Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction;

(ii) No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture;
(iii) An order from a superior officer or a public authority may not be invoked as a justification for torture.

**Article 4** provides that each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. **Article 4 further** says that each state party shall make these offences punishable by appropriate penalties after taking into account their grave nature.

**Article 10** provides that each state party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

**Article 11** reads that each state party shall ensure that its competent authorities proceeded to a prompt and impartial investigation, wherever there is a reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

**Article 13** further provides that each state shall ensure that any individual who alleges that he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities.

**Article 14** provides for a provision of compensation to be paid to the victim of torture. It reads that each state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation.

**Article 17** establishes a committee against torture carry out the functions assigned to it.\(^2\)

**Body of Principles for the Protection of All Persons from any form of Detention and Imprisonment**

These principles were adopted by General Assembly vide resolution no. 43/173 of 9 December, 1988. These principles apply for the protection of all persons under any form of detention or imprisonment. Some of these principles are worth noting.
Principle-1 Provides that all persons under any form of detention or imprisonment shall be treated in a human manner and with respect for the inherent dignity of the human person.22

Principle-6 Provides that no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

Principle-7 lays down a rule of construction. It says that the words "cruel, inhuman or degrading' treatment or punishment" should be interpreted so as to extend widest possible protection against abuses, whether physical or mental including the holding of a detained or imprisoned person in condition which deprive him temporarily or permanently of the use of any of his natural sense. 23

Principle-10 enshrines a rule of natural justice. It reads that anyone who is arrested shall be informed at the time of his arrest the reason for his arrest and shall be promptly informed of any charges against him.

Principle-21 prohibits torture and other mechanism. It discusses clause by clause.

(1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

(2) No detained person while being interrogated shall be subject to violence, threats or methods of interrogation, which impair his capacity of decision, or his judgment.

Principle-33 says that a detained or imprisoned person or his counsel shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities.

Principle-34 further reads that whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of family of such a person or any person who has knowledge of the case.24
Basic Principles for the Treatment of Prisoners, 1990

It was adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

These principles should be followed while treating and dealing with prisoners which are as under:

➤ All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

➤ There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

➤ It is, however, desirable to respect the religious beliefs and cultural precepts of the group to which prisoners belong, whenever local conditions so require.

➤ The responsibility of prison officers for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of the society.

➤ All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.

➤ Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.

➤ Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.

➤ Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

➤ With the participation and help of the community and social institutions, and with due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.

➤ The above Principles shall be applied impartially.²⁵

The rules were adopted by General Assembly resolution 45/110 of 14 December 1990.

Fundamental aims of the United Nations Standard Minimum Rules for the Non-Custodial Measures are as under:

(i) The present standard minimum rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.

(ii) The rules shall be implemented taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.

(iii) Member states shall develop non-custodial measures within their legal system to provide other options, thus reducing the use of imprisonment, and to rational crime justice politics, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the other.

Scope of Non-Custodial Measures

Scopes of non custodial measures are as following:

(i) The relevant provisions of the present rules shall be applied to all persons subject to prosecution, trial or the execution of a sentence, at all stages of the administration of criminal justice. For the purposes of the rules, these persons are referred to as "offenders", irrespective of whether they are suspected, accused or sentenced.

(ii) The rules shall be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth or other status.

(iii) Non-custodial measures should be used in accordance with the principle of minimum intervention.

Legal Safeguards

Legal safeguards available to the offender are as under:

(i) The selection of a non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence
and the personality and background of the offender, the purpose of sentencing and the rights of victims.

(ii) The offender shall be entitled to make a request or complaint to a judicial or other competent independent authority on matters affecting his or her individual rights in the implementation of custodial measures.

(iii) Non-custodial measures shall not involve medical or psychological experimentation so as to cause undue risk of physical or mental injury to the offender.

(iv) The dignity of the offender subject to non-custodial measures shall be protected all the times.

(v) In the application of non-custodial measures, the offender's right to privacy shall be respected, as it shall be the right to privacy of the offender's family.

Implementation of Non-Custodial Measures

Rules relating to implementation of non-custodial measure should be observed while giving effect to the above mentioned rules which are as under:

(i) Within the framework of a given non-custodian measure, the most suitable type of supervision and treatment should be determined for each individual case aimed at assisting the offender to work on his or her offending.

(ii) Offenders should, when needed, be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.

The duration of a non-custodial measure shall not exceed the period established by the competent authority in accordance with the law.25

Vienna Declaration and Programme of Action, 1993

It was adopted by the World Conference on Human Rights on 25 June 1993. Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the conference affords a unique opportunity to carry out a comprehensive analysis of the International human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner.

Recognizing and affirming that all human rights derive from the dignity and worth
inherent in the human person and that the human person is the central subject of human rights and fundamental freedoms and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms. Reaffirming their commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55 including universal respect for, and observance of human rights and fundamental freedoms for all. 27

The Declaration provides freedom from torture by welcoming the ratification by many member states of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or punishment and encourages ratification by all other member states. The Declaration further emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities. Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in existing International human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Declaration considered the major changes which have taken place on the international scene and the aspirations of all the peoples for an International order based on the principles enshrined in the Charter of the United Nations, including promoting and encouraging respect for human rights and fundamental freedoms for all. It further emphasizes the principles of equal rights and self-determination of people, justice, equality, and rule of law, pluralism, development, better standards of living and solidarity. 28

Concluding remarks

It is concluded that preamble of the Charter of the United Nations 'reaffirm faith in the fundamental human rights,' in the dignity and worth of the human person, and in the equal rights of men and women. The Charter requires nations to establish conditions under which justice and respect for human rights obligation under
International Law can be maintained and to promote social progress and better standards of life in larger interest of the freedom. Once an instrument is ratified, the signatory is bound to bring that provision in their national laws and that should conform to United Nations standards. Even if these International instruments are not legally binding, they are morally compelling the state parties to the Conventions. Thus in order to carryout this mandate and to prevent the custodial violence, a number of International instruments have been enacted and it should be incorporated in national law of the country.

Prof Lous B. Sohu has said that Universal Declaration of Human Rights has become a part of the Constitutional law of the world community and together with the Charter of the United Nations it has achieved the character of a world law superior to all other International instruments and to domestic laws.⁹ Although India has yet to ratify a host of international instruments, but it is a signatory and party to the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights and so it is under an obligation to eliminate the practice of torture of detainees and accused in order to preserve their human rights. However India has made the most sincere efforts for the protection and promotion of human rights the world over, and is regarded as the greatest champion of the human rights among the third world nations. It may therefore, be submitted that if international Conventions preventing custodial violence of different form and magnitude are translated into reality by the government of the day intendment with the national laws and policies the custodial violence in India may decrease to a considerable extent.

Thus the sublime International Declaration under reference imposes positive duty on the members to take all necessary steps in concomitance of their respective local laws to ensure that no person including wrong doers and detainees are deprived of their basic human rights conferred upon them by recognized international organizations. This declaration for the first time international forum impressed upon all the civilized nations to treat and acknowledged torture in any form as an offence punishable under law.
REFERENCES

3. www.hrdc.net
4. www.ohchr.org
6. Ibid.
7. Ibid.
9. Supra note 5.
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11. Supra note 8 at 52
12. Id at 53
13. Id. at 54
14. Id. at 55-57.
17. Id. at 518.
18. Id. at 519.
19. Supra note 8 at 64.
21. Supra note 16 at 565-587.
22. Id. at 589.
23. Id. at 590.
24. Id. at 591-600.
27. Id. at 413-424
28. Ibid.

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