Summary and Conclusions
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The world-order in the 21\textsuperscript{st} century is on the threshold, of globalization, economic interdependence and information relevance on the one hand, and universal concern for individual and collective human rights on the other hand.

The primitive man had not known any things like human rights. With the dawn of civilization one might have hoped that some respect for human rights would emerge. Yet human rights eluded him. It seems the era of human rights dawned with industrial revolution. A clarion call was given that man is endowed by birth with certain inalienable rights of which, right to life, liberty and property are sacrosanct.

The quality of nation civilization can be largely measured by the respect it shows for the protection and promotion of human rights. The theme of human rights is of universal concern and it cuts across all ideological, political and cultural boundaries. They are owned to the individuals by the States as well as by the organized and the social and economic group, which are the center of power and authority.

After the I World War, the world community for the first time realized the need to establish some institutional mechanism to protect and preserve the rights of man. But it is only after the horrors and worst kind of brutalisation of human rights in the II World War, that human rights movement gained some momentum. Efforts at securing human rights were intensified.

Soon after the coming into force of the UN Charter on December 10\textsuperscript{th}, 1948, the General Assembly of the United Nations adopted and proclaimed the universal declaration of human rights. The United Charter\textsuperscript{1} was the first

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\textsuperscript{1} The Charter signed on 26 June 1945 and entered into force on 24 October 1945. For the full text see Brownlie, I., *Basic Documents on International Law*. 
international instrument which in unequivocal terms proclaimed "Universal respect for, and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion". The United Nations Charter has provided a constitutional basis on which the United Nations can bring about changes in the status of the individual vis-à-vis his own state. Thereafter two, International Covenant, one on Economic, Social and Cultural Rights and the other on Civil and Political Rights were adopted by the Central Assembly on December 16, 1976.

Addressing the World Conference on Human Rights at the Vienna on 14th June, 1993, His Excellency Boutros Boutros Ghali expressed his views in the importance of human rights as follows: "One thing is certain—there can be no sustainable development without promoting democracy and, thus, without respect for human rights. Only by heightening the International Community's awareness of human rights in this way and involving everyone in this effort can we present future violations that our conscience, and the law, will condemn." He stated "May human rights create a special climate of solidarity and responsibility. May Human Rights become the common language of humanity."

In India, the gneiss of human rights can be found in Vedic scriptures of Hinduism. The Vedas, the metrical religious works of the ancient Hindus, offering guidance, inter alia, on religious and social obligations. These constituted the base on which the Hindu Law was built.

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

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2 Extract from the opening address of His Excellency Boutros Boutros-Ghali; UN Secretary-General at the World Conference on Human Rights, 14th June 1993 (Published in Human Rights: The New Consensus)- Regency Press (Humanity Ltd.) 1994 London.

3 Supra Note-2.
the need to develop a dynamic approach that fully reflects changing need and perspectives and responded to the emergence of new threats to human dignity and well-being.

According to Justice M.N. Venkatachaliah, the ‘Human Rights’ philosophy is the quest for translating the International standards of human rights “from phrase to action”. The incorporating of a bill of rights in written constitution is to incorporate the Human Right regime into the municipal law and make them justifiable and enforceable. If it is so incorporated in the Constitution, which is fundamental law of land, Human Rights transforms themselves into enforceable rights.

An attempt has been made in the present thesis to understand the causes of the violation of human rights in India. To identify the reasons of occurrence of custodial violence and its effect on police image and people’s participation in police. The study is analytical and descriptive in its nature.

India has made the most sincere efforts for the protection and promotion of Human Rights the world over and is the greatest champion of the human rights in the Third World. The impact of the universal Declaration of Human Rights on the drafting of Human Rights Chapters (Part III and IV) in the India Constitution.

However, the fact remains that there is a wide gap between theory and practice. All that is preached is not always put into practice and India is no exception. The denial of fundamental freedoms and human rights by the states creates the conditions of social and political unrest. It definitely sows the seeds of violence and conflicts within and between societies and nations.

Violation of human rights is a global phenomenon. The difference is only of degree. Where the people in India, in majority are illiterate, ignorant poor

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and exploited ones, the violation of human rights are bound to be more but where the people are educated, advance they are likely to be less prone to inhumane treatment and exploitations. India being a vast country, with greater part of masses being poor, ignorant and illiterate; they are bound to suffer more atrocities and inhuman treatment at the hand of the richer ones.

Police atrocities are a common feature of Indian scenario. Some of the common feature of violations of human rights are the torture of arrested persons, the disappearance of suspects who ought to have been in regular police custody, deaths in fake encounters and at police stations, and undertrials denied in jails for years without trials. Extensive societal violence against women; female bondage and prostitution; trafficking in women; child prostitution, trafficking, and infanticide; discrimination and violence against indigenous people and scheduled castes and tribes; widespread inter-caste and communal violence; increasing societal violence against Christians; and widespread exploitation of indentured, bonded, and child labour.

The statute book is presently disfigured by laws like Terrorist and Disruptive Activities Prevention Act, the National Security Act, and the armed Forces Special powers Act, which need closer scrutiny. Such laws make a mockery of human rights.

People belonging to the minority communities have come in for special attention. Since the onus of providing one’s innocence lay on the victim, the jingle "fill it, shut it and forget it" very well applied to jail housing the TADA detenus; due to large scale of violation of human rights under this Act, the Parliament was forced not to extend it further. However, it is been reawakened in the form of POTO.

A demand was thus made in favour of the setting up of the National Human Rights institutions. These institutions are necessary corollary to the

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democratic machinery of governments. They are means of democratic empowerment for those who are less powerful and less advantaged. The national human right institution can complement existing democratic bodies within the government\(^7\). In fact, national human rights institutions are fundamental mechanism in protecting people rights. One such institution is National Human Rights Commission (NHRC), which is playing a significant role in creating mass awareness and building mass-opinion against human rights violations in India. It was established under the Protection of Human Rights Act, 1993. The former Chief Justice of India, Shri Ragnath Mishra, first chaired it. This Commission has made visits to various states and citizens in India and reported the human right violations there to the government of that state. The independent investigations of their Commissions have clearly indicted thousands of police personnel’s and other para-military forces. These Commissions have brought several instances of violation of human rights in Jammu and Kashmir, Punjab, Uttar Pradesh and various other parts of the country. Hence, the establishment of NHRC with adequate powers for investigation and monitoring of action should itself go a long way in improving the situation with regard to violation of human rights by police and proper handling of any complaints or reports in that regard.

Though the National Human Rights Commission is more than 12 years old. But it has made little impact on those who want to violate human rights: the police and security forces The commission has not been able to instil fear in the custodians of law and order that certain things should not be done to human beings. The NHRC need to function in a manner that obtains extraordinary credibility from the institution itself and whatever legitimacy they acquire is through their actions and functions that are performed by its members. This moral legitimacy needs to be built upon the institutional

\(^7\) See "Why are National Institutions Needed?" - Summary of the Proceedings of Commonwealth Workshop on National Human Rights Institutions, (Ottawa, Canada, 30 September - October 2, 1992)
framework upon which NHRCs exist and would eventually help in promoting an effective human rights community involving partners from all the sectors within a society°.

Besides NHRC the role of Supreme Court of India is commendable in expanding Human Rights. The main function of judiciary is to check whether use of torture is common in crime investigation and if it is, how it should be stopped, and also, modern equipment are provided for proper crime investigation. Moreover, the help, which the judiciary can give, will be moulded by the laws that we have; judicial activism notwithstanding. We have to guard against legislative inaction or failure as much as against administrative inaction or failure".

The judiciary is the basic structure for protection of human rights at national level. The helpless victims of custodial crimes" consider it their only ray of hope. Therefore, a duty is caste upon the judiciary to help preserve the judicial process for the protection of the rights of individual in detention.

As observed by the Committee of Ministers of the Council of Europe -

Custody pending trial should be ordered only if there is reasonable suspicion that the accused has committed the alleged offence and that he is likely to absconds, interfere with the course of justice, or commit a serious offence.

During the emergency the fundamental rights of the prisoners received a serious set back due to the negative attitude of the Supreme Court. After the emergency, it shed its passivity and started upholding the individual’s basic rights and liberties. The new judicial activism was evident in a number of its judgements delivered in the post-emergency era. Public Interest Litigation is

° See Kuldip Nayar Where NHRC has failed in India, The Hindu December, 1999


°°° See Criminal Law Journal (Cr. L J. 632 (637) 1970); - Custodial crime is defined the period when some limitation is placed upon the liberty of the deceased and that limitation must be imposed, either directly or indirectly.
the leading instrument of this change. Thanks to this kind of litigation, issues of locus standi, burden of proof, time constraints, and legal aid has all been interpreted so as to benefit victims of human rights violations.\footnote{11}

Public Interest Litigation as an instrument for the protection of human rights has been popularised by the civil rights movement in the country. In the famous Asiad Case 1982\footnote{12} the apex court made it clear that the affected group might not be in a position to approach the court directly, in order to facilitate delivery of justice for that group, the court held that any citizen with social conscience can file the petition, which would be taken note of.

PIL as a judicial response to violation of human rights emerged out of long struggle for civil rights in India. Justice P.N.Bhagwati and Justice V.R.Krishna lyer took upon themselves the activist role in providing justice to the needy.

The concept of Public Interest Litigation has played a humanising role in the sphere of custodial violence, pertaining to pre-trial detainees. This is also evident from the second periodic report of the UNHCR\footnote{13}, which has stated that:

"The Supreme Court in India and the various High Courts of the individual states ensured the effective implementation of Human Rights through a liberalised review of administrative action. Such liberalisation has led to the growth of Public Interest Litigation and seizure of Court's jurisdiction in such matter even on the basis of post-cards or telegrams received from individuals or of stories or reports published in magazines or newspapers and the provisions of compulsory legal aid to the needy".


\footnote{12}{See Aswini K.Ray, Civil Rights Movement and Social Struggle in India, \textit{Economic and Political Weekly}, Vol. XXI No. 28. 12/07/1986.}

\footnote{13}{See UNHCR report, New York, 1991.}
Public interest litigation is often concerned with redressal of damage to the public at large. Sometimes petitions are presented to secure group rights; as for example, in the case of bonded labour, where individuals are not in a position to come forth to assert their rights before the courts. Sometimes a representative action can be brought by the affected class itself. This is obviously a remedy most suited to enforcement of Human Rights of large groups of people.

However, it is also been upheld by the Supreme Court that a person in prison does not become a non-person and that he is entitled to all human rights other than what are taken away or curtailed by the process of incarceration. Indian law provides certain rights to the prisoners/ suspects/ accused persons while in custody. These rights are so fundamental that no one can lawfully violate them. Unlike the International Covenant on Civil and Political Rights, the Indian Constitution does not specifically provide any right against custodial torture. However, certain fundamental rights enumerated in Part III of the Constitution are also available to them. These rights are mainly contained in articles 19, 20, 21, 22, 32 and 226 of the Constitution. Besides these constitutional rights, they enjoy certain other legal rights under the Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act 1861. The Indian Supreme Court in a number of cases has not only acknowledged these rights but also expanded their scope through the process of judicial activism giving new and liberal interpretation.

Some of the important rights of the prisoners are given below:-

1. **Right to life:-** This right is the basis of all human rights and the sanctum sanctorum of the constitutional temple. If there were no right to life, there would be no point in having the other rights. In *ADM Jabalpur Vs. Shiv Kant Shukla* the Supreme Court took the view that if the President had

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11 See Appendix V.  
2. declared a state of emergency in the country and has also suspended the
right to move the court for the enforcement of any right, the right to life
under 21 could also be suspended. The 44th Amendment Act engrafted an
exception viz., that such declaration suspending the right to move any
court for the enforcement of fundamental rights shall not cover article 20
or 21 of the Constitution.

3. **Right against self-incrimination**: One of the motives of torture is to
extract confession from the suspects for the crime he is alleged to have
committed. He is subjected to various kinds of constant torture until he
breaks down and finally makes confessional statement. However, he has
right to refuse to answer all self-incriminatory questions. The Indian
Constitution confers this right to the suspects/accused person under article
20(3). Section 24, 26 and 27 of the Indian Evidence Act and sections 162,
163(1), 315 and 342 (a) of Criminal Procedure Code also prohibit forced
confession or testimony as inadmissible in the court of law and protect the
suspect/accused person against confessions.

4. **Right to be informed of ground for arrest**: Under the Indian
Constitution, the arrested person whether arrested with or without warrant,
has the right to be informed of the ground of his arrest and the arresting
authority is duty-bound to communicate at its earliest, the grounds of such
arrest to him.

5. **Right to consult a legal practitioner**: Article 22(1) of the Constitution
of India also confers on the arrested person the right to consult the legal
practitioner of his own choice and to be defended by him. But in the
Indian Constitution, there is no specific provision, which provides the
right to free legal aid to the accused person. In Janardhan Reddy10 the
Supreme Court specifically held that article 22(1) of the Constitution does

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not provide the accused person right to the services of a legal practitioner at the state cost.

6. **Right to be produced before magistrate within 24 hours of arrest:**
   This is also a very important and valuable right to the arrested person constitutionally guaranteed under article 22(2) of the constitution of India. Section 57 along with section 167 of the Criminal Procedure Code 1973 also require the police to produce the suspects/ accused person before the nearest magistrate within 24 hours of his arrest. The magistrate can either order release on bail or remand to the police custody to facilitate the further investigation of the case. The maximum period for the police remand length is 15 days. Detention beyond 24 hours without being produced to and authorized by a magistrate is illegal.

7. **Bar against handcuffing:** - Handcuffing is certainly a practice, which is against a human dignity. But a person stands punished by this humiliation though he may be subsequently acquitted by the court. The matter was discussed in the Prem Shanker Shukla Case.

8. **Right against custodial torture:** - Instances of torture of prisoners by the jail staff or the police have been confirmed by a number of Commissions and committees. One such committee is Mulla Committees, which have pointed out the bad conditions of jails and subjails.
   Moreover, the present study shows that the Indian police and other forces have become unruly and turbulent. It carries an image of terror and torture in our country. This is because the incidents of police torture and brutality often hit the headlines in newspapers and expose police to severe criticism from different sections of the society. Indeed nothing tarnishes the image of police more than brutality directed against persons in their custody.
Vadackumchery\textsuperscript{17} (1994) presented a paper on “Custodial Violence and Death”. Opinions were collected from 254 Police Officers; Four thousand two hundred and forty six people were also selected from all walks of life to give their responses on use of torture in Police custody. Few accused persons were also interviewed. Following were the main findings:

- 78.32\% Police officers admitted that the arrested were kept in custody till a confession was obtained from them.
- 63.04 \% people from all walks of life were of the view that investigating officers extort confessions from the arrested even by unfair means.
- 81.5\% police officers admitted that third degree methods were used during interrogation.
- 38.82\% accused persons reported that the police took them into custody by ‘informal’ arrest.
- 36.18\% accused persons reported that they were kept in custody for more than 24 hours.
- 86.67\% members of the general public reported that the third degree methods were being used by police only against criminals and suspects in crime.

Custodial violence often results in custodial deaths, which is treated as the worst crime in a civilized society, governed by the Rule of Law. The presence of this pernicious practice in our criminal justice system is a slur on the good name of our democracy. It is the duty of all citizens, to calmly analyze and identify the root cause of this evil and take positive steps in a methodical manner to reduce the incidence and later completely wipe out the problem. The remedial measures suggested in this study should help in streamlining the procedures and discouraging resources to custodial violence by policemen.

In the following section, an attempt has been made to recapitulate the essence of the study conducted.

To research the issue of custodial violence in India is considerably difficult. The Indian government has consistently prohibited independent human rights organizations from investigating allegations of torture in the country. These groups include Amnesty International, Human Rights Watch Asia, the International Red Cross, the British Parliamentary Human Rights Group, and even the UN Human Rights Rapporteurs (India is obliged to permit access under the conditions of the International Covenant on Civil and Political Rights).

Because of this refusal the number of offences is difficult to ascertain, however, reports by human rights and lawyers' organizations inside India, reports by India's National Human Rights Commission, the Indian government, newspapers, periodicals and personal testimonies given to Khalsa Human Rights have all been analyzed.

The Indian government has consistently refuted many of the allegations that it permits torture, and it has, unconvincingly, stated that all those found to have practiced torture have been quickly and sufficiently punished. Needless to say, impartial investigations by reputable organizations would be in the government's best interest, thereby reducing the considerable international concern over the level of violations.

Custodial violence, including torture and death in the lockups, 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 they 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 committed under the shields of "uniform" and "authority" between the four walls of a police station, lock-up and prison, where the victims are totally helpless. The quality of a nation's civilization
can be largely measured by the methods it uses in enforcing criminal law. Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of any offence but the law does not permit use of third degree methods or torture of accused in custody during the interrogation and investigation with a view to solve the crime. End cannot justify the means. The interrogation and investigation into a crime should be in a true sense purposeful to make the investigation effective.

The custodial deaths are neither usual nor unknown. Such deaths take place not only in India but also in various other countries. These deaths definitely lead to custodial violence. But they may also arise due to various other factors, for which no responsibility can be fixed on custodial authorities; for instance they may result from natural causes like old age, accidents or even suicide. Sometimes erroneous diagnosis or inadequate medical response may also be a contributory factor.

However, in the public eyes, all deaths in custody are presumed to be due to custodial violence and torture and the very name of “custodial deaths” conjures up the images/pictures of the worst form of human rights violations by the police.

Due to the frequent reports in the media about cases of alleged police torture which is often exaggerated, persistent campaigns against such practice by human rights activists and even the usual depiction of police torture and misconduct on the screen, only further reinforce this public perception.

Causes of Custodial Violence in India:

The police are one of the important agencies of the state clothed with legal powers to enforce writ of the state. The manner in which such power is exercised has a bearing on the protection of human rights. There are various reasons for the custodial violence some of them are:

Firstly, the growing political interference in the day-to-day working of police has turned the force into becoming the agents of the party in power. An
unholy nexus has developed between the corrupt police officials and unscrupulous politicians.

In the Hindustan Times (November 1997) the article on ‘Tainted Bureaucrats’ reveals a very depressing situation. In Haryana, an officer of the rank of Director General of Police was caught red-handed while accepting bribe. In Calcutta, a Commissioner of Police was seen to have links with the underworld. In Bihar, an IPS officer of the rank of Superintendent of Police was reported to be making fast buck by dealing in stolen cars. Hence, an illegitimate nexus has developed between the police, bureaucrats, politicians and criminals. Moreover, the whole sale of transfers of police officers with each change of government has become a matter of routine. In the present society, the policemen are judged not by their honesty but on the considerations of know how the persons in authority.

Secondly, a part of the problem also lies in the aggressive enforcement of law and order as a quick-fix solution to the problem of rising crime, without tackling the root causes for the increase in crime. The interrogation of a person, whether witness or suspect, is no easy task. It requires tremendous patience and considerable understanding of human psychology. Hence, they investigate the crime in a way they want often by resorting to short-cut methods. They want quick results and hence save themselves from the logic and deduction based scientific investigation. The problem of brutalization and the use of third-degree methods in the police is, however, more difficult and complex. The fact is that the practice also enjoys the support of a large section of the public in the mistaken belief that it is necessary for effective maintenance of law and order. They use the aggressive measures, including use of third degree against criminals and suspects for curbing the crime. As Wickershan Commissioner (USA) pointed out, “Third degree brutalizes the
police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public.\textsuperscript{18}

For the police force to give up the third degree method is a very difficult task. They justify and support its use on the following grounds:\textsuperscript{19}:

- Due to lack of manpower and an increasing rate of crime, the police officials hardly get the adequate time for proper investigation and detection of crime. So, they resort to third degree methods.
- There is no harm in using violence against criminals like terrorist, dacoits as they use the same against the innocent section of the society.
- There is virtually no facility for the professional investigation and detection of crime in most of the police station. So, the police rely on third degree.

Thirdly, there has been a malfunctioning of our criminal justice system. The criminal justice system in India revolves around laws passed by the union parliament and state legislatures. The basic criminal law in the country is made up of the Indian Penal Code, the Code of Criminal Procedure, and the Evidence Act. The criminal justice system covers the entire scenario from the occurrence of the crime, investigation into the facts by the enforcement agency, adjudication in the court. The fact that criminal justice system in India is in shambles because it is archaic, obsolete and oppressive in its nature. This is because of unhelpful laws like easy release of bail even to the desperate and dangerous criminals, delays in court trials, which result to the overloading of court etc. All these definitely erode the public confidence in the legal process. Police acts as judge and jury, for punishing the culprits. Hence, delivering the private justice to suspects of crime has very serious implications for both, the functioning of criminal justice system and good governance in a democratic

\textsuperscript{18} See National Commission on Law observance and enforcement, report on “Lawlessness in Law Enforcement” (1931), p.5.
\textsuperscript{19} Based on the interview with some seniors and junior police officials on the condition of anonymity.
society. Killing a person without legal or judicial sanctions definitely constitutes an offence of murder.

Fourthly, the lack of proper infrastructural facilities – The absence of separate female lockups in many police stations has made it unsafe for women accused persons for detention at the police station after their arrest. Moreover, there is also not sufficient number of lady police an officials and lady constable at the police stations.

Fifthly, due to the absence of proper supervision of the senior level officials, the junior level officials tend to violate the rights of the citizens. The junior level officials feel that their activities are not being monitored by their supervisory officers and they take the liberty of this situation. As a result there is an unsupervised and uncontrolled interrogation of accused/suspects by untrained junior level policemen, which often leads to serious injuries or death.

Sixthly, Obsolescent and outdated organisational system – One of the most important reasons for the inability of the police system is to confirm the demands of the human rights mandate, because of the continuance of an obsolete and outdated organisational system. The system is governed by an act of 1861, which acts as a tool for the British people the rebellious Indians. Unfortunately this act continues to be unchanged despite the end of the empire. The heart of the matter is that the basic rule of the police and its structure did not undergo any change. Police should play an active role in the implementation of the social legislation.

Seventhly, the working conditions of the policemen. According to the lower ranks of police officials, their working conditions are quite pathetic. They are highly dissatisfied with their pay structure. They do not have any fixed hours of work; family accommodation is not available to a majority of them and their promotion prospects are nil. The police working 16 hours a day and 7 days a week even on the national holidays they hardly find any time for
recreation. They are always under constant pressure to produce results. Hence they adopt the short cut methods. It becomes difficult for them to be sensitive towards human rights under these conditions.

Eighthly, lack of accountability – Accountability means answerability for the proper performance of the assigned tasks. As we see, for the past few years, there has been a total lack of control and accountability in the police system. This can be seen in the ambivalent attitude of the police to use third degree methods and the informal detentions. If there is any mishap, like death in custody due to torture they are being prosecuted u/s 304 IPC (culpable homicide not amounting to murder) and with easier chances of release of bail, instead of section 302 IPC (murder) with the punishment of death or life imprisonment. This was observed by the Supreme Court also. In the State of UP vs. Ram Sagar Yadav and others (AIR 1985 SC 416) in this case Brij L.al. against whom there was an accusation of trespass was beaten to death by the police for not having obliged their demands of bribe and for reporting the demand of bribe to the Superintendent of police. The Supreme Court set aside the order passed by the High Court and resorted to the conviction by the Session Judge u/s 304 IPC. The Supreme Court felt that the accused should have been convicted u/s 302 instead of Section 304.

**The causes of death other that custodial violence**

Not all cases of death and injuries of accused persons should be attributed to custodial violence. The deaths may take place in custody because of natural causes (old age, illness etc); non-custodial use of force by police like handling a riotous mob; accidents or suicide during custody. Although the police does not normally have any direct responsibility incase of natural, accidental, suicide, or other deaths as discussed above. Still, they are being held responsible for their negligence and for not providing the medical aid. There may also be some exceptional cases where the natural death from illness likes heart attack or hypertension problems, which may result due to pressure of police interrogation.
There are adequate provisions in the Penal Code and Criminal Procedure Code to deal with custodial violence and torture. Section 220 IPC punishes illegal confinement by a public official with punishment, which may extend to 7 years imprisonment of either description, with or without fine. Similarly, Section 330 IPC punishes torture in police custody for extorting confession or information on a crime with imprisonment of either description up to 7 years with fine. Torture resulting in grievous injury invites punishment of imprisonment up to 10 years, simple or rigorous to gather with fine, under Section 331 IPC. Whereas, Section 154 (2) Cr.P.C. requires a Police Station Officer recording FIR to send a report of his action to the Magistrate having Jurisdiction. The law also provides for mandatory magisterial inquests (u/s 176 Cr.P.C.) in all cases of deaths in police custody. In actual practice, the District magistrate never conducts these inquires and entrusts them to Additional District Magistrate or Sub District Magistrate. In most cases, the inquiry consists of receiving the post-mortem report and accepting the cause of death written therein. No uniform practice is followed in actual conduct of inquests.

**Recommendations in order to curb custodial violence**

Enormous changes have occurred in this country since Independence, which cast a paramount obligation and duty on the police to function according to the requirements of the Constitution, law and democratic aspirations of the people. They require the police to be professional, service-oriented, free from extraneous influences and above all be accountable to the rule of law.

This has, however, not happened because those who control and run the system have abused it beyond repair and are responsible for the large number of ills that presently threaten to destroy the system.

The time of the need is to create a climate of respect for human rights, not only in the police, but the society at large – people, press, politicians,
bureaucrats. In view of the discussion aforesaid, the following steps are considered necessary to effectively combat custodial violence in our country.

- The basic problem regarding the police today is how to motivate to achieve the objective of public service, of upholding the human rights and liberty of the people. This definitely calls for the attitudinal change in the police from grass root level to the senior supervisory level and also to promote professionalism and to develop consciousness about the limitations of their power, authority and responsibility.

- Organisational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. The emphasis is still more on muscle than on the mind. Human rights, if at all, form an insignificant module in the training programme and there is hardly any emphasis on human rights in the training of constables, who form 85 percent of the force. Respect for human rights is not rewarded. If the leadership itself is doubtful about the imperatives of human rights in policing, and if they disregard its importance in the training of subordinate officers, it is pointless to expect change in the behaviour of ordinary sub-inspectors and constables. Hence, the education and training should be imparted to police officers at all levels, in order to sensitize them about the primacy of human rights.

- Create a strong public opinion against all forms of custodial violence. The publics are ignorant about the limitations of police powers and their role under the criminal justice system as well. This ignorance of the public makes the police men to violate the human rights of the people. The media should be made use of extensively for educating the masses, about their rights and freedom. The media can help improve the status and efficiency of the police force. They can attempt not to disparage the police without justification. If they cooperate in law enforcement, there is bound to be a welcome response from the other side that eventually will result in greater
social defense and better law and order situation. People and police ought not to maintain an adversarial relationship as it harms both of them. There are black sheep in every organization. To isolate and cultivate the talented is the challenge that has to be faced by the community, the media and the NGOs. Sincere efforts should be made, to involve the human rights activists, as they can best prevent the human rights violation by the police forces. Moreover, the police themselves cannot perform its role effectively without public cooperation and that is not forthcoming because of the police ineffectiveness and its unfriendly image. A retired senior police official, who preferred not to be named, told me, that though efforts of civil rights organizations could at least reduce such horrendous instances, he saw no way of eliminating them. It will definitely guarantee human rights protection, the security of life and property and a credible system of criminal justice in the country. The police are, after all, governed by the leadership within its ranks and, more important, of the present system. The blame, therefore, cannot be laid solely at the door of the individual policeman. After all, he said, the police do what the managers of the system want it to do.

• Making use of scientific aid and investigation. As the junior level officers are under the constant pressure from above to solve the case, they often resort short cut methods. The sub inspector with whom I had an opportunity to discuss these problems has said that it was rare that scientific aid like training and lifting of fingerprints were ever employed by them. Sometimes, they do not even attempt this as they feel that they were not adequately equipped for the task. The senior level officials should encourage the use of scientific aid in investigation such as use of forensic science laboratories, lie detectors, psychologists and a team of finger and footprint experts.
The National Police Commission\(^{20}\) has recommended that every state government should nominate Additional Session judge for every district (in consultation with high courts) to conduct a judicial inquiry in all cases of alleged rape of a woman in police custody, death or grievous hurt caused to a person in police custody and death of two or more persons from police firing in the disposal of an unlawful assembly and submit report to the State government who shall punish the report together with action taken thereon within two months of the receipt of the report. Unfortunately no action has been taken in pursuance of this recommendation. The actions should be taken in order to control custodial deaths in our country.

Another important measure to avoid custodial violence is to make the criminal justice system more effective. There should be re-examination of some basic legal concepts and procedures to make the system more efficient and harmonious. Adequate infrastructure and stringent bail procedures are the need of the time.

The State Human Rights Commission should be made more financially strong.

Senior police officials should not protect police functionaries at all when they are found guilty in the custodial crimes.

The guilty officials should be meted out with stringent punishments. Moreover, the compensations that the victim’s family receives should be given from their salary.

In order to stop the short-cut methods used by policemen, the government should allot ample of money on their training and also providethem with modern technology.

There should be improved supervision on the working of police stations, particularly with regard to investigations and interrogation, which should

be done by the investigating officers personally. They should never be left to junior level policemen like constables and head constables. Moreover, strict prohibition of any official who is participating in investigation/interrogation after consuming alcohol.

- The interrogation rooms should be searched properly before one starts to interrogate a person. This is essential so that a person cannot commit a suicide. Objects like sheet of cloth, rods, chains etc. should not be kept in such rooms Before bringing the person to be interrogated, he should be properly searched, in order to ensure that he does not carry any objet like knife, rope, poison etc.

- Another preventive measure to curb the custodial torture is a system of periodic visits to the police stations and the places of detention. This will keep the police officials on their toes and they will be able to discharge their duties in more effective manner.

- Educated people may be recruited who may not compromise with the primitive technique of torture.

- The police should not succumb to pressures exerted by the politicians.

- Women police should interrogate the women detainees only.

- If an accused person in police custody falls ill, he/she should be immediately be hospitalized.

- There should be more transparency in the police system. They should not hide from the media, in the name of national security, which definitely results into suspicions about the incident. As a result, there is erosion of public credibility. Hence, an honest attempt is to be made to expose the cases and fix the responsibility as well, which will definitely brings an attitudinal change and curb mal-practices also.

- There should be more transparency in the findings of magisterial inquest.