CHAPTER – 1
INTRODUCTION

It is the sovereign function of the state to maintain law and order in its territory and to, promote and protect basic human rights of each and every individual residing in its jurisdiction. State acts in two capacities under international human rights law and humanitarian law. One hand, state is under an obligation to abstain from infringing human rights and on the other hand, it is duty bound to guarantee respect of recognized human rights. The content of the principle of respect for human rights contains three prepositions. First, all states have a duty to respect the fundamental rights and freedoms of all persons within their territories; second, states have a duty not to permit discrimination on the basis of sex, race, religion or language; and finally, states have a duty to promote universal respect for human rights and to co-operate with each other to achieve the desired objective. But more interestingly and paradoxically most of the human rights violations have their genesis in state's action itself. It clearly exhibits state's inability and apathy in assuring protection to the persons living in its territorial jurisdiction. In real sense, it demonstrates inaction and denial of international and constitutional obligations imposed on states by human rights laws and constitutions of the state concerned. Torture is an example of state's inaction, an abuse of power and the negation of the right of a human being to exist and to have an identity by state. It is rampant in almost all parts of world irrespective of culture, tradition, boundary, locality, etc. and became a global phenomenon. It is both unfortunate and lamentable
that torture is practiced in an era which is often called era of human rights and gives importance to the protection of human values, worth, dignity, self-respect and good governance in a more effective and responsible manner.¹

In a democratic society every organ of the state ought to be accountable to the people. And this applies more appropriately to the police than others as the police represent the law and order of the organized society. Indeed, in a democratic set-up the members of the police are not above the law but subject to it like all other citizens and every action of the executive has to be supported on grounds of legality when challenged before a court of law. How can the police insist on irreproachable behaviour from wrongdoers if their own conduct is not above board? Thus public insistence on law observance can be achieved best if the police themselves as the country's principal law enforcing agency set the example of law abidingness before the citizens by scrupulously observing the law. “Law observance by the police is thus the best form of law enforcement that one can conceive of in a country under the Rule of Law”.²

The oppression of weak by the strong is the basic animal method that some of the perverted man could not resist in spite of being called human and has existed since time immemorial. With codification of law the worst of human degradation found place in the statue of

books of civilizations, as one of the punishments for rebels and criminals in the ancient and medieval world in the form of torture. It was also accepted as one of the methods for extracting confession or information and using it as legal proof. In order to accomplish these desires the human rights are violated and people are tortured. The struggle for recognition of human rights has been an integral part of human civilization and is present even in the present era.

The word torture comes from the Latin word “Tortus” i.e. to twist. The Greeks extended its meaning to denote a test or trial to determine whether something or some one is real or genuine. In Law, it, however, means infliction of severe bodily pain, either as punishment or to compel a person to confess to a crime or to give evidence in judicial proceeding. The primitive people used it as a mean of ordeal and to punish the captured-enemies. Charles Darwin traced the origin of torture from the struggle for survival of the fittest. Thus, torture is as old as humanity is. In ancient Athens, slaves were always examined by torture, and for this reason, their evidence were always considered to be reliable. However, as a general rule, they could not be tortured to establish the guilt of their masters. The Romans frequently inflicted torture by order of the Emperor, even on free men in order to obtain evidence of the crime of laease Majestetis i.e. crime against the sovereign. Interestingly, until the 16th century, torture was apparently unknown to the Canon Law of the Christian Church, about that period, the Roman Treason Law began to be adopted to as "Crime laesae Majestetis Divines" i.e. crime of injury to Divine Majesty. A Decree of Pope IV (1243-54), issued in 1252, called on Civil Magistrates to have persons accused of heresy tortured to elicit
confession against themselves and others. This was, perhaps the earliest instance, of Ecclesiastical-sanction of the mode of examination. Gradually, the Ecclesiastical Courts developed from the Roman law and applied a system of torture that culminated in the inquisition.\(^3\)

During the epic period (1400-800 B.C.) torture was certainly practiced on prisoners by the police. Torture under the orders of the king was not uncommon. After the epic period, the next was the rate of law and philosophy (820-320 B.C.). During this age, Manu, Yajanvalkya, Brihaspati, Narda, Kautilya and Gautama were some of the important law givers. Torture and severe punishment during this age was widely frequent phenomenon. According to Manu and Narada, eight sites would be selected for infliction, such as privy parts, the abdomen, the tongue, the two hands feet, the eyes, the nose and two ears. Manu held that after considering the inclination in the offender, his antecedents and capacity punishment should be given. He said that men who are guilty of crime and had been punished by the King go to heaven, become pure like those who perform meritorious deed.

In Manusmriti, there were enough instances where harsh punishments were prescribed for the violators of the law. There was indeed much truth in the oft-repeated prescription from Manu's "Danda-niti". Dread of the rod alone restrains the bad, controls the good, and makes a nation strong. The king must punish fearlessly, else the strong would oppress the weak. Similarly, Narada referred to the inhuman practice of pouring hot oil into the mouth, ears and

thrusting red-hot iron into the mouth of a criminal sentenced to death.\textsuperscript{4}

Kauṭiliya observed that awarding of punishment must be regulated by consideration of the torture and nature of the offence, time and place, strength, age, conduct, earning and monetary position of the offender. He recommended eighteen kinds of torture to elicit information from the accused. He held that if a person killed another intentionally, he was to be put to death with torture. This means Judges should always consider the relevant circumstances before deciding the actual punishment. Enumerating the evil consequences of the ill administered danda. Kauṭiliya held that by not punishing those deserving to be punished and punishing those not deserving to be punished, by arresting those who ought not to be arrested not arresting those who ought to be arrested and by failing to protect them from thieves and for robbing himself, the king produced disaffection among the subjects which ultimately led to the ruin of the kings.” However, in cases of harassment of prisoners, if anyone puts hindrance to sleep, sitting down, meals, answering calls of nature, or movement pulling fetters (in Judge’s lock-up or in prison house) the fine should be three panas, increased by three panas for him who did it and for him who causes it to be done successively.\textsuperscript{5}

During the Buddhist period (320 BC to 300 AD) the offenders were arrested and punished harshly. During this period there were number of tortures which usually result in the death of culprit. The 'bilanga-

\textsuperscript{4} V.D. Kulshrestha, \textit{Landmark in Indian Legal \& Constitutional History}, 8-10 (5\textsuperscript{th} edn, 1981).
thalika’ or a ‘gruel-pot’ or ‘porridge pot’ or ‘sauce pan’ was a torture in which the skull of the victim was first trepanned and then a red hot ball of iron was dropped in so that the brain boiled over like porridge. Similarly, in hathapajjotika or the ‘flaming hand’, the hand was made into a torch with oil rages and set alight. Although, Ashoka inherited from his forbears an efficient bureaucratic set-up, the stress was on the observance of the law at piety which in its turn was expected to lead to proper justice and reduction in crimes. Similarly, the status of women prisoners was not satisfactory in this period. The records of ancient Hindu period were replete with incidents of abduction rape, molestation and torture of women criminals by the custodian of laws. Even female prisoners had their feel tied and put in prison. It was only in the second phase of ancient Hindu period that rights of women criminals had been given much attention.

Imprisonment was a very common form of punishment in Mughal India. There were no specific rules fixed for it. These were much hard for the majority of prisoners. The main feature of these punishments were that no period was fixed for it. The Quazi and Magistrate had a right to send anyone to prison for the offence or crime for which the punishment could be awarded and the accused had to show the signs of repentance to secure his freedom. It was Abdul Fazal, one of the learned Ministers of Akbar, who gave an interpretation that the Muslim rulers could award punishment to offenders. For the purposes of awarding punishment of imprisonment, number of forts were used to confine offenders. However, there were no regular jails in the

modern sense of the term during the Muslim period in India. Generally forts were treated to be prisons during that regime. There used to be three noble prisons of castles in Mughal India. One was at Gwalior, second at Ranthambore, and the third at Rohtas. Criminals condemned to death punishment were usually sent to the fort of Ranthambore. They met their death two months after their arrival there. The Governor then bringing them to the top of the wall and give them a dish of milk to drink, he was caste down thence on the rocks. There are ample references where ordinary criminals were kept under guard in irons, but not in prison. Princes sentenced to imprisonment were sent to the jail at Gwalior, where they rot away in chains and filth. In fact the Gwalior fort was reserved for nobles that offend’. To Rohtas, were sent those nobles who were condemned to perpetual imprisonment, from where very few return home. These things showed that solitary confinement was common in medieval India.  

Inspite of serious defects in the administration of criminal justice during medieval period, the system worked remarkably well in the regime of Akbar the Great. Akbar was inspired by the high deal of doing even handed justice to the people. He brought a basic change in the Mughal administration. He adopted a policy of tolerance and non-discrimination towards all human beings and saw that no injustice is committed in his realm. The greatest of monarchs in his time, Akbar was surely of a very high, place among the rulers of mankind for his brilliant success in the great adventure of governing men. He tried to prohibit harsh treatment of prisoners, Jahangir,

further followed the policy of his father Akbar. He abolished the punishment of chopping of nose and ears. Further during his regime the procedure of the courts was simple and summary. No sooner were the accused apprehended than, they were produced before the court. It was seldom that a man had to wait for more than twenty-four hours, for his trial. It was Jahangir who interdicted the cutting of noses and ears, but he left other forms of amputation untouched. During his reign, he never disgraced himself by inflicting the penalty of flying, but he occasionally punished the darker social and political crimes with dreadful deaths by impaling, strangling, tearing by wild beasts, or trampling by elephants.\(^9\)

Aurangzeb (1658-1707), the last of the great Mughals, was the most intolerant emperor of India. He was a cruel Mughal ruler. For temporary confinement, there were police lock-ups in the cities termed as Chabutra-i-Kotwali. There are frequent references in the news tellers of Aurangzeb about the confinement of thieves, robbers and even guilty officers in these lock-ups. The officer-in-charge of the Chabutra-i-Kotwali used to be Mushrif. There was a reference in a newsletter to the death of Bahadur Singh, Mushrif of Chabutra-i-Kotwali in November, 1693.\(^10\) During the reign of Aurangzeb, arbitrary arrest and detention were less in numbers. On various occasions, he issued orders to Gazis that no one should be put to custody except on legal grounds (Wajah-i-Sharai), and that the Kotwal should not arrest any man except for theft, breach of peace and riot. The emperor issued orders in 1672 for the speedy trial of the prisoners.\(^11\)

---

9. Ibid.
During the British rule, the custodial violence was considered legitimate to maintain kingship and sustain the domination. Human rights phenomenon was like a curse for the police officers because their prime concern was to protect British rulers. History informs that custodial violence, including tortures, illegal detentions, rapes, deaths etc. in police custody etc., was the rule of law in colonial's reign. Criminals and suspects were humiliated and subjected to custodial violence.12 With the passage of time, the administrative structure of Britishers in India began to assume a new form. Various major alterations were made in the existing legal system. In the year 1790, the punishment of mutilation was forbidden by law in Bengal and criminal courts were directed to inflict imprisonment with hard labour in its stead. In 1833, the attention of the "British Parliament was drawn to the anomalous arid sometimes conflicting judicatures by which laws were hitherto being administered. Accordingly in that year an Act was passed which effected many changes in the constitutional set-up of this country. Indian Law Commission was appointed to prepare a uniform code of legal rules.13

On 16 April 1855 the Torture Commission submitted its report suggesting wide ranging changes in police system because commission found, “Corruption and bribery reign paramount throughout the whole establishment violence fortune and cruelty are their chief instruments for detecting crime, implicating innocent and extorting money.” The 1st and 2nd reports of Law Commission were also available to the Government. Therefore, First Police Commission

---

13. Supra note 8 at 55.
took only 22 days to submit draft of Indian Police Act which was later passed on 16 March 1861. Section 29 of this Act stipulates that every police officer who inflicts personal violence to any person in his custody shall be liable to a punishment of fine in the form of salary of three months and imprisonment of three months or both. These statutory provisions in their entirety insulate the accused persons against police torture. All this happened quickly and action was also taken swiftly to lay the foundation of present judicial system including police. Hence it may be mentioned that the then Governor General was not concerned about welfare of the masses but his concern was to economise expenditure and increase efficiency in the existing police forces as laid down in the notification dated 17 August 1860 issued at the time of appointing 1st Police Commission. The feudal administration in vogue during later Mughal period, therefore, slowly passed into a well-oiled machinery to keep masses under control and also to deprive local feudal chieftains of their influence on the public and their participation in the administration to ward off any possibility of uprising against the colonial Government. This second half of 19th century was the period of consolidation of British Imperialism not only in India but all over the world, but greater attention was paid to the colonies of Asia. During this period planned and sincere efforts were made to remove all impediments to the smooth administration but the interest of British Empire was supreme. The enlightened class was offered entry into elite services and other influential persons were given titles to ensure their loyalty to the crown and thus a new class of native supporters was created in the interest of the empire. Any liberal and right thinking persons, even among the Europeans was
chastised and discouraged if he wanted to introduce reforms beneficial to masses at the cost of interest of the empire.\textsuperscript{14}

Sir Charles Napier who conquered the territory of Sindh in 1843 adopted the Royal Irish Constabulary model for policing in Sindh and established a separate police organisation, totally controlled by its own officers. Certain disciplinary guidelines were also issued to the cops. This was the first path breaking initiative by the British Government to prevent the tortuous and corrupt practices of the police. This positive step encouraged the governments of other presidencies to take up similar incentives. The Government of Madras, in order to inquire into the allegations of torture by the police officials and to introduce similar reforms as of Sindh police administration, appointed the Torture Commission in September 1954. The Commission while recommending substantial changes in the police administration also demarcated the boundaries of the duties and responsibilities of police in order to do away with their extra-judicial exercise of power. The Commission observed:

\begin{quote}
Police, we consider, do involve a duty entirely distinct from the magisterial. It is to all intents and purposes in its nature executive and although not absolutely incompatible with that of a magistrate, it had better be kept separate. The arrangements calculated for the prevention, next the detection of crime and the apprehension of criminals, we conceive the proper duties of police; the trial and punishments are the duties of magistrates and the court of circuit in their respective gradation.\textsuperscript{15}
\end{quote}

\textsuperscript{14} R.C. Dixit, \textit{Police: The Human Face}, 97-98(2000).
\textsuperscript{15} G.K. Kasturi, \textit{Thoughts on Police Reforms}, 3(1966).
The depictions of rampant and pervasive brutality in lock-ups, rape and death in custody and widespread corruption amongst the policeman galvanised the governmental machinery to embark upon the reformation process in existing laws. Consequently, the Indian Penal Code of 1860 came into force in 1862; the Indian Police Act was enacted in 1861; the Indian Evidence Act came into operation in 1872; and the Code of Criminal Procedure in 1898. Similarly, the Madras District Police Act, 1859 was passed on the basis of the recommendations of the said Commission for Madras Presidency. Sections 24 and 25 of the Indian Evidence Act. Sections 162, 163, 172 and 173 of the Code of Criminal Procedure and Sections 330 and 331 of Indian Penal Code furnished the cops with certain disciplinary rules and regulations to combat the miserable incidents of police torture. Section 339 of the Indian Penal Code making 'wrongful restraint' covered illegal custody. It was another landmark initiative taken up by Lord Curzon, when he setup the Policy Commission in 1902. The Commission submitted its report in 1903 and designed several measures to improve the police administration and to mitigate the effects of harsh attitude of police personnel. The Commission, while criticising the working of the Police noted:

The police are far from efficient it is defective in training and organisation; it is inadequately supervised; it is generally regarded as corrupt and oppressive; and it has utterly failed to secure the confidence and cordial co-operation of the people.\textsuperscript{16}

Though the Government of India passed orders on the Report

of the Commission on 21 March 1905 but the behaviour of the police officers remained unchanged. Some other legislations regarding police administration were also passed e.g. the Indian Rifles Act, 1920; the Police (Incitement of Disaffection) Act, 1922; the Delhi Special Police Establishment Act, 1946 etc. But from till 1947 when India got independence, the British set the police machine as status quo so as to suit their imperialist needs. But with the transition of India from a slave country to an Independent, socialist, democratic and welfare state, the style of police handling of offenders and law and order situations had to change from an aggressive and mailed fist attitude to peaceful and persuasive handling of agitating groups.

At the dawn of Indian Independence, Police like any other branch of administration was loyal to the Government and had no responsibility towards the public at large, for them the day of independence was only the day of change of Government without any change in their uniform, mode of recruitment, curriculum of training; code of conduct, criminal law, disciplinary control and most importantly in their attitude towards public and towards Government. Since there was no change in police – public relations, it was but imperative that public attitude towards police also remained unchanged thus a chasm between two attitudes was perpetuated. As if it was not enough, apathy of new rulers with the help of loyalist of previous regime perpetrated total in difference of successive Governments towards police reforms. Police of colonial India, created and trained to defend the interest of British Empire was now saddied to serve the democratic Republic of India.
Those who fought the system were now destined to make policies and those who fought the fighters of freedom were supposed to implement the policies. Police as an organisation lacked this resilience and adaptability. The leaders of the organisation partly suffered from guilt of acting against national interest earlier and partly their view or discipline prevented them from telling the truth. The smoke screen between police leadership and political executive created a communication gap which was not to be bridged even after half century of independence.\footnote{17}

The adoption of the Constitution brought a ray of hope for the victims of police torture. The judiciary in India played a very significant role to prevent 'custodial violence' by enlarging the scope of Article 21 of the Indian Constitution. Apart from it, the democratic principles incorporated in the Constitution changed the prime duty of the police personals. But, it is unfortunate, that despite of protecting the interests of public police force bore stigma for being violator of human rights. The torture process starts with the arrest or detention of the person for the purpose of interrogation and the stigma survives long times after his release torture at Police Stations and in Jail which is a judicial custody has become a common feature. The number of custodial deaths and false encounter, disappearance after arrest and other serious violation of human right including blinding are alarming. Gross violation of human rights have been reported from Punjab, Kashmir, Uttarakhand in U.P. and North-Eastern Provinces of India.\footnote{18}

\footnote{17. Supra note 12 at 98.}
\footnote{18. Supra note 1 at 15.}
The statutory power of the police to investigate is provided under sections 154 to 176 of Chapter XII of the Criminal Procedure Code, 1973. Section 164 of the Code provides that any Metropolitan Magistrate may record any confession or statement made to him in the course of investigation. The proviso to Section 164(1) provides that no confession shall be recorded by a police officer on whom any power of Magistrate has been conferred under any law. Section 164(3) provides that a person who expresses his unwillingness to make a confession shall not be remanded to police custody, which guarantees that police pressure is not brought on the person who is unwilling to make a confession. Section 57 of the Code provides that no police officer shall detain a person in custody for more than 24 hours and shall be produced before the court of the nearest Magistrate. It is the duty of the Magistrate under section 54 to inform the arrested person that he has a right to get himself medically examined if he was subjected to physical torture in police custody. Section 176 of the Code makes it obligatory on the nearest Magistrate to hold an inquest as to the cause of the death of a person when such a person dies in police custody. Sections 25 and 26 of the Indian Evidence Act provides that confessions made to the police officer while in police custody is inadmissible. Section 27 of the Act provides as to how much of the information received from an accused may be proved. The main object of these sections is to protect the person charged with an offence from being subjected to torture by the police. The Act makes it a substantial rule of law that confession
made to a police officer in the absence of a Magistrate is inadmissible in the Court of law.\textsuperscript{19}

The Hon'ble Supreme Court of India has from time to time, taken up this issue, even by treating a Post Card as Habeas Corpus Petition and directed the Government concern to take appropriate steps to prevent this crime. In the Bhagalpur Blinding case, the Hon'ble Supreme Court expressed its deep resentment at the lack of concern shown by the Judicial Magistrates in not enquiring from the accused about their injuries in the eyes at the time of granting remands. Provisions of remand were found to have been used more in its breach than in its observance.\textsuperscript{20}

Since, 2000 according to the statistics submitted to the Parliament Ministry of Home Affairs, prison custody death have increased to 54.02\% by 2008, while police custody death during the same period has increased by 19.88\%. Infact, from 2004-05 and 2007-08 prison custody death during the same period has increased by 12.60\%.

\textbf{Death in Police Custody in 2000-2009}\textsuperscript{21}

\begin{center}
\begin{tabular}{|c|c|c|}
\hline
Years & No. of Death & % of increase \\
\hline
2000-01 & 127 & \\
2001-02 & 165 & 29.92 \\
2002-03 & 183 & 44.09 \\
\hline
\end{tabular}
\end{center}


\textsuperscript{20} Supra note 1 at 15.

<table>
<thead>
<tr>
<th>Years</th>
<th>No. of Death</th>
<th>% of increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003-04</td>
<td>162</td>
<td>27.56</td>
</tr>
<tr>
<td>2004-05</td>
<td>136</td>
<td>7.09</td>
</tr>
<tr>
<td>2005-06</td>
<td>139</td>
<td>9.45</td>
</tr>
<tr>
<td>2006-07</td>
<td>119</td>
<td>6.30</td>
</tr>
<tr>
<td>2007-08</td>
<td>187</td>
<td>47.24</td>
</tr>
<tr>
<td>2008-09</td>
<td>127</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>19.88</strong></td>
</tr>
</tbody>
</table>

**Death in Judicial Custody in 2000-2008**

<table>
<thead>
<tr>
<th>Years</th>
<th>No. of Death</th>
<th>% of increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>910</td>
<td></td>
</tr>
<tr>
<td>2001-02</td>
<td>1,140</td>
<td>25.25</td>
</tr>
<tr>
<td>2002-03</td>
<td>1,157</td>
<td>27.14</td>
</tr>
<tr>
<td>2003-04</td>
<td>1,300</td>
<td>42.86</td>
</tr>
<tr>
<td>2004-05</td>
<td>1,357</td>
<td>49.12</td>
</tr>
<tr>
<td>2005-06</td>
<td>1,591</td>
<td>74.84</td>
</tr>
<tr>
<td>2006-07</td>
<td>1,477</td>
<td>63.31</td>
</tr>
<tr>
<td>2007-08</td>
<td>1,789</td>
<td>96.59</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>54.92</strong></td>
</tr>
</tbody>
</table>

On 8 April 2010, the Cabinet approved the decision to introduce the Prevention of Torture Bill, 2010 before the parliament and ratify the UN Convention Against Torture. The Prevention of Torture Bill, 2010

is being treated as a secret document. Its earlier draft, Prevention of Torture Bill, 2008, contained only three operative paragraphs relating to (1) definition of torture, (2) punishment for torture, and (3) limitations for cognisance of offences. The Prevention of Torture Bill, 2008 was highly flawed and ACHR had submitted specific recommendations to the Government of India after holding a National Conference in New Delhi in June 2009. Torture in police custody remains a widespread and systematic practice in India. ACHR's research into patterns of torture in police custody since 2008 suggests that victims suffer high risks of torture in the first twenty four hours following detention. There are no safeguards to ensure that a person taken into custody will have their detention recorded, have prompt access to a lawyer or impartial medical examination upon their arrival at the place of detention, or at the time of his release. The lack of any effective system of independent monitoring of all places of detention facilitates torture.23

Torture is the most naked assault on human dignity. In India as elsewhere, it is the poor person who suffers the most. While the decision to introduce the Prevention of Torture Bill, 2010 is welcome step, unless Government of India takes lessons learnt from the failure of the Supreme Court judgment (DK Basu Judgement) and amendment of the Criminal Procedure Code and addresses the shortcomings, torture and custodial death will continue to rise. The Asian Centre for Human Rights recommends to the government of India to take the following measures to stamp out torture in India. Hold public discussion on the Prevention of Torture Bill, 2010 with all

stakeholders including the civil society groups and enact the same in 2010 itself. Amend the recommendations of the Law Commission of India to make consequential amendments to the Indian Evidence Act, 1872 (insertion of Section 114B) to provide that in case of custodial death the onus of proving of innocence is fixed on the police and repeal Section 197 of the Cr.P.C. to uphold the supremacy of the judiciary.24

The Central Government has refused to implement the Law Commission’s recommendation in its 152nd report on custodial crimes to amend the Indian Evidence Act, 1872 [insertion of Section 114(B)] to provide that in case of custodial death, the burden of proof lies with the police. Both the Central and State Government consistently refuse to provide sanction for prosecution as required under Section 97 of Cr.P.C. Most of the State Government have not been implemented Section 176 of Cr.P.C. amendment in 2005, which provides that in case of death and disappearance of person or rape of woman while in the custody of police, there shall be mandatory judicial inquiry and in case of death, the examination of dead body should be conducted within 24 hours of the death. In most cases the State Government have been ordering magisterial inquiry instead of judicial inquiry.25

1.1 Problem Profile

In India the police carries the image of terror and torture and violence appears to be institutionalized in its functional methodology. Torture

---

25. Lok Sabha unstarred question No. 2717 answered on 18.3.2010.
is used routinely in police detention, while torture is applied less systematically by prior officials, their complicity with prison gang violence and ill treatment implicit in appalling prison conditions are serious violation.

Intuitional weakness to check torture in India is issue of concern. The court have proven a powerful tool against torture but are hampered by lack of specific legislation, immunities offered under the criminal procedure code and national security laws as well as the more general problem of judicial delay.

Another focus of concern is NHRC power to conduct investigation which has not been effectively deployed against torture and NHRC’s preference for interim monetary compensation over recommending prosecution is a cause for further concern.

1.2 Research Hypothesis

Torture in India is part of an inherited legacy. Indian criminal and penal laws and their accompanying institutions derive for archaic and punitive colonial legislation. The explanation for torture can be broadly discussed under the following categories: first impact on police of their colonial origin as a repressive instrument of the police. Secondly there is constant pressure on the police form all quarters including politicians and bureaucrats to show instant result. Thirdly there is lack of training in human right and back of adequate facilities and personal for investigation and the extremely high cause load with an inefficient supervisory structure also hinders the ability of the police to produce the result required to them, prompting them to take short cuts.
Inspite of many intuitional and functional problems with the present justice system. The Supreme Court as come up with innovative ways of dealing with custodial torture and custodial death cases by means of securing the right to compensation for custodial death and torture victims and by formulation of a custody jurisprudence.

1.3 Object of Study

The primary objective of the study are:

Firstly, to make an assessment as to the contribution of Judiciary, NHRC, NGO’s, Human Rights instruments in achieving the objectives enshrined in the constitution through progressive and liberal interpretation of various provision of the constitutions.

Secondly, to identify the deficiencies which have report into the present day legal system.

Thirdly, to suggest remedial measures to make justice delivery system more efficient within the existing framework.

1.4 Research Methodology

Primarily, the study is theoretical and doctrinaire in terms of data the present study has been based on both the primary and secondary source material. Regarding the primary sources, the relevant data has been collected from the files, documents, reports, judicial decision, debates, and discussion held on the topic. As regards the secondary source material, information has been collected from the relevant books written by various scholars on the subject, articles published in periodicals, journals and newspapers.
1.5 Plan of Study
The research has been presented systematically by dividing in six chapters detailed as under:

Introduction – Chapter-I gives the introduction of the topic, its problem profile, object of study, methodology and chapter scheme.

Constitutional and Legislative Provisions for the Protection of Custodial Torture in India – Chapter-II explores total range of rights of accused relatable to the police process commonly referred to as pre-trial process as well as those come as part of the trial or post-trial processes. Besides certain Constitutional right, accused enjoy certain other legal right under Indian Penal Code, 1860. Criminal Procedure Code, 1973 and the Indian Evidence Act, 1861, various Police Acts and Manuals. These yardsticks have been steadily intensifying the horizon of the obligation thrust on State. Such dynamic vibration provide the needed protection to those who come in adverse contact with the penal processes in particular.

Protection for Custodial Torture: International Perspective – Chapter-III deals with law relating to the prohibition of torture which has evolved with intensive involvement of the international community through the United Nations as well as regional organizations in the form of adoption of various Human Rights and Humanitarian Law treaties and focusing that prevention of torture of all kind can be achieved through the existence of safeguards and strategies at the international, national and local level.

Nature and Magnitude of Violation of Human Rights and Custodial Violence in India – Chapter-IV explore the common type
of incident involving Human Rights abuses under police and judicial custody and highlighting the lack of an effective systems of continued of independent monitoring of all places of detention which further facilitate torture.

**Institutions for the Protection of Custodial Torture in India** – Chapter-V deals with the establishment and maintenance of National Human Rights Institutions as they are means of democratic empowerment for those who are less powerful and less advantaged and focusing on the role of Indian Judiciary to what extent the judiciary has controller and curbed the irresponsible and illegal action of the police officials which are perpetrated by them during the course of performance of their duties and highlighted the role of NGOs (National and International) to the cause of Human Rights through independent and non-biased investigation into the allegation of the violence and injustices. These groups have exposed the involvement of the State and its institutional Enforcement Agency in the abuse of the people rights and freedom.

**Conclusion and Suggestion** – Chapter-VI explores about the major finding of the study and provides suggestions relating to prevention and correction of custodial violence in India.