



CUSTODIAL TORTURE; GROSS HUMAN RIGHT VIOLATION

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Abstract

Custodial torture is the reality that world is facing today. As custodial torture has been a widespread phenomenon all around the world and it is evil of vilest form of crime done by the protector of the law i.e. public officials who are vested with the power control crime commission, to protect the people in the society and maintain law and order in the society. For eradication of custodial torture, custodial death and other violence in the police custody United Nations General Assembly passed a resolution on 10th December 1948 and made Universal Declaration on Human Right, 1948. This is the international document which protects the person from custodial torture, inhuman and degrading treatment and from illegal arrest and detention. Torture to person in custody by the police to facilitate investigation is gross human right violation and shook the conscience of the people. In this article I will discuss Universal Human Right Law, its monitoring body in India along with the violation of human rights by the police in police custody and in judicial custody.

Keywords: - Custody, torture, human right, police and crime

1.1 Introduction

Human rights are also called fundamental rights, basic rights or natural rights. Human

rights cannot be curtailed by any legislation or by any government as they are inherit by person from their birth irrespective of caste, colour, sex or place of birth. Human rights do not compose a mere list of certain basic rights, which every individual can enjoy. The concept is growing day by day and it not only comprises traditional civil and political rights but also economic, social and cultural rights. Human rights are the basic or natural rights, which are inalienable and important for the sufficient development of human personality and for happiness and progress of human society. Human right has its origin from "Magnacata". The highest risk of torture to the accused person is in their first 24 hours following the detention and there is no safeguard which guarantee that the accused person taken into custody will have access to lower and impartial medical examination following the arrest there is a lack of effective independent system and independent monitoring system which facilitates torture and torture is gross human right violation. The common type of incident involving human right abuses under police custody are death police custody, custodial rape, third degree methodology of investigation and Police remand.

1.2 Universal Declaration on Human Right, 1948

Custodial torture, custodial death, violence and abuse of police power are not limited to India but are widespread. It has also been the concern of international community because the problem is universal and the challenge is global.¹ The Universal Declaration of Human Right (UDHR) was adopted by United Nation General Assembly (resolution 217 A) on 10th December, 1948² as a common

¹ Dayal Keshav ; Human Right Year Book 2010 (2010) p 80

² Also available at <https://www.un.org/en/universal-declaration-human-rights/>



standard to be followed internationally for all people around the globe. The declaration of human right has attained a special authority and it became a part of international law. United Nation drives its authority to make human right law specifically from United Nation Charter, 1945. UN Charter , 1945 on its very Article 1 talks about the purpose mentioning “*To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights* “. ³This became the sole purpose for making a law on human right which is universally accepted by the entire nation in the world.

Article 5 of UDHR provides that the person arrested should not be subject to any kind of torture or inhuman treatment and also person who is serving jail should not get any degrading treatment and punishment Article 9 of UDHR emphasizes that the arrested person shall be informed about the reason of arrest and also about the charges put on him. Both these articles clearly protect the rights of accused person in custody from the perpetrator of crime i.e. police or jail authority. In India Constitution of India, 1950 gives a significant right to their citizen in form of fundamental right under chapter III. It includes most of the provisions of the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and various other international instruments. India has ratified international instruments on human rights. ⁴

1.3 The International Covenant on Civil and Political Rights, 1966 (ICCPR)

International covenant on civil and political rights was adopted by General Assembly resolution on 16th December 1966. This was made for considering the obligation of the State under the Charter of United nation to promote universal respect and observance of human rights and freedom. ⁵ Article 6 of International Covenant on Civil and Political Rights talk about right to life and there is no arbitrary deprive of any human being's life.

Article 7 of International Covenant on Civil and Political Rights emphasized that person in custody shall not be subject to any kind of torture or inhumane or degrading treatment for punishment. It also says that any medical or scientific test shall not be done without the free consent of the accused person. ⁶ Article 9 International Covenant on Civil and Political Rights talks about there is no arbitrary arrest or detention and no one shall be deprived of his liberty except on the ground or in accordance with any procedure which are established by law.

The Supreme Court observes in *Nilabati Behra v. State of Orissa*⁷ that prisoners or detenues are not denuded of their fundamental right under Article 21 Constitution of India. The Court awarded a sum of Rs. 1.5 Lakhs to the mother as her son had died in police custody. The Court Judgement refers “*Article 9(5) of International Covenant on Civil and Political Rights which indicates that an enforceable*

³ United Nation Charter 1945 , Article 1

⁴ Saini RS : ‘ Custodial Torture in Law and Practice with reference to India’ Journal of Indian Law Institute (Vol.36 No. 2) (April- June 1994) p 192

⁵ International Covenant on Civil and Political Rights 1966 ,Preamble

⁶ International Covenant on Civil and Political Rights 1966 , Article 7

⁷ AIR 1993 SC 1960



*right to compensation is not alien to the concept of enforcement of a guaranteed right.*⁸

1.4 Torture in Police Custody

The highest risk of torture to the accused person is in their first 24 hours following the detention. There is no safeguard which guarantees that the accused person taken in custody will have access to the lawyer and impartial medical examination following the arrest. There is a lack of effective system and independent monitoring system of all the places of detention which facilitates torture.

The common type of incidents involving the human right abuse under police custody are death in police custody, custodial rape, third degree methodology of investigation and police remand.

1.4.1 Death in police custody:

The torture which results in the death of convicts, under trial, prisoners in the custody of police it assumes to be alarming and a matter of great concern in the modern society. Custodial death it strikes or creates a question on efficient administration of criminal justice system and also show how the rule of law is violated. Custodial deaths are done by those people who are entrusted with the forcing of law in the society thereby shaking the credit or faith of citizens from justice delivery system.⁹

The Supreme Court in *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*¹⁰ said that “ The diabolic recurrence of police

torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardian of law destroy the human rights by custodial violence and torture and invariably resulting death.”¹¹

Human Right Watch has published a report in 2016 that takes a deep study into the incidents of deaths in Indian police custody. Human Right watch does in-depth study and investigation into 17 custodial deaths that occurred between 2009 and 2015, research by Indian organisation and more than 70 Human Right Watch interviews with the victim’s family members, witnesses, justice experts and police officials. In each of the 17 cases, the police didn’t follow appropriate arrest procedure including documentation of arrest, notifying family members ,conducting medical examination, producing the suspect before a magistrate within 24 hours, which make the suspect more vulnerable to the abuse and may have contributed to a believer by the police that any exploitation could be covered up in most of the cases investigating agency mainly police officials failed to furnish appropriate action that could have been helped to ensure culpability for the death.¹²

To curb the level of human right violation during police custody it has been seen that where police action causes death, the police officer is liable and held responsible for the death. The police who commit custodial violence shall be adequately punished and punishment should be awarded in a wide

⁸ Nilabati Behra v. State of Bihar , AIR 1993 SC 1960

⁹ Sharma, Mala: ‘Death in police custody’ Guhati Law Times (Vol. IV, 9) (2007)

¹⁰ (2003) 7 SCC 749

¹¹ Supra note 1

¹² “Bound by Brotherhood” India’s Faliure to End Killing in Police Custody , Human Right Watch ,19 December 2016



publicity so that other police officer would learnt a lesson and would not repeat the evil of torture or custodial death while the accused is in his custody. Section 176 of Code of Criminal Procedure, 1973 talks about the enquiry by the magistrate about the cause of death when any person dies or disappears who is in the custody of police or in any other custody authorised by the magistrate or the court. In 2005, clause 5 was added in section 176 by the way of amendment which provides that the judicial magistrate or metropolitan magistrate or executive magistrate or police officer shall hold an enquiry or investigation within 24 hours of the death of the person in custody and for what the body with a view to its being exam in to the nearest civil surgeon.¹³ Even after the amendment did death in custody has not been proved that it was not normal or natural death but it was death caused by the police. The reason for inefficiency of section 176 of Code of Criminal Procedure, 1973 is that the enquiry of death under this section is not preceded by independent investigation agency. Therefore all custodial deaths and other violation of human right should be investigation and dealt with human right commission.

1.4.2 Custodial Rape:

The status of a woman in custody draws its attention by Central Government Ministry to set up a National Expert Committee in 1986 to go into the problems of custodialized women. When committee visited all the facilities and see the situation of women in

custody, they came across complaint of harsh treatment by the police including physical torture, rough handling, sexual indignity or abuse treatment. Total disregard by the police of procedure applicable to the search, custody, transfer and the right of the arrestee create immense suffering for the women.¹⁴

When the inmate of custody is woman, vulnerable section of society, they face additional and horrifying mode of torture like pressing cigarette on the delicate parts, inserting iron rods or stick along with chili powder in their private part, torturing their children in front of mother. In fact they are subject to molestation and rape not only by the police officer but also by the male inmates of the jail.¹⁵ The police men did not spare even minor girls from torture as are evident by the *Mathura Rape*¹⁶ case. In this case a young girl by the name of Mathura was raped by two policemen inside the police station but she neither raise any alarm nor does she resisted the act. The Session Court acquitted the accused on the ground that there was decent consent. The Bombay High Court reversed the judgement and said that there is distinguish between consent and passive submission. The Supreme Court however reversed the judgement of High Court and observed that the prosecutrix was not subjected to any fear of death or hurt which may lead her to submit her body. The Supreme Court therefore acquitted the accused. After the verdict of *Mathura Rape Case*¹⁷, there was widespread protest and demonstration for the review of the verdict.

¹³ Code of Criminal Procedure 1973, Section 176 (5)

¹⁴ Ayyar, Justice V.R. Krishna: 'Are not Women Human even when in Custody?' Madras Law Journal, (2007) p 12-14

¹⁵ Saini, RS: 'Custodial Torture in Law and Practice With Reference to India' Journal of Indian Law Institute (1994) p 181

¹⁶ Tuka Ram and Anr v. State of Maharashtra, (1979) 1 SCR 810

¹⁷ Ibid



Afterwards an amendment was brought about in Section 376 of the Indian Penal Code, 1860. Section 376(2) (a) of Indian Penal Code, 1860 penalises police officer who committed rape on women while in officer's custody. The punishment provided for the same is rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to life imprisonment and shall also be liable to fine.

Custodial rape is another form of torture which is the worst form of crime and aggravated form of torture. It is inhuman and shakes the dignity of a woman. Man who keeps the woman in custody is generally in very strong and powerful position. They misuse their position to sexually exploit women and it is a very serious offence. Custodial rape is committed by *police officer or a public servant or an officer who is in the management of a jail remand home or a hospital on a woman in his custody*¹⁸ it is a crime committed by the custodian of the law who are vested with the duty to protect the dignity, integrity and modesty of women. Rape is crime against basic human right. The Supreme Court observed that "rape" amounts to violation of the fundamental right guarantee to a woman under Article 21 of Constitution of India, 1950.¹⁹

Article 15(3) Constitution of India, 1950 allows the Union and State governments to make special provisions in order to defend and shield the interest of women. The Constitution of India was amended in 1976 to make it a fundamental duty of every citizen to pronounce the practice derogatory to

women under article 51A (e). In criminal law there are provisions which grant special protection to women from custodial torture. Section 51 clause 2 and section 100 of Criminal Procedure Code, 1973 says that if a woman is to be search by the police officer in connection with the crime "the search shall be made by another woman with strict regard to decency".

The Code of Criminal Procedure also lays down that the women must be interrogated at her residence²⁰. In spite of all these trending strict provisions in the criminal law the custodial torture of a woman goes and debated and they are abused, molested and rape in the police stations, jail and military interrogation centres.

*R. D Upadhyay v. State of AP*²¹ is the most important case for women and women with children in prison. The judgment contained specific guidelines, based on various committee recommendations, about how children should be cared for in prisons. The position of women prisoner is more pathetic than their male counterparts. One of the major reasons from the state of affairs is lack of adequate and separate prisons for women. There are, however, only 12 states that have prisons exclusively for women. There is a need for distinct prisons for women. Similarly, under-trials ought to be kept separated from convicts; youths from solidified lawbreakers; first-time guilty offender from ongoing wrongdoers. For women, there should also be an effort to

¹⁸ Persons mentioned under Section 376 of Indian Penal Code, 1860

¹⁹ Chairman Railway Board v. Chandrima Das, AIR 2000 SC 998

²⁰ The Code of Criminal Procedure 1973, Section 160 (1) proviso

²¹ AIR 2006 SC 1946



separate prostitutes and procuresses from others.²²

1.4.3 Third Degree Methodology of Investigation:

The encyclopedia of Social Sciences defines "third degree" as: *"The use of brutal methods as an aid to criminal investigation" and adds that, "the third degree is usually charged in the United States, though similar complaints against the police are by no means rare in other countries".*²³

In *Ramnath v. Saligram Sharma*,²⁴ the Supreme Court observed *"the crisis of "third degree" comforting civilised society is really a threat to rule of law and is indeed tantamount to putting in peril the very democratic way of life, the effect of third degree as it directly affects his fundamental rights of freedom and is also gross violation of Article 21 Constitution of India."*

When police officer assaults any witness or an accused to obtain a statement from him is not his duty. It is not a police duty to put any person under lawful restraint in order to extract or extort confession from him. The obvious outcome of third degree method has been the public distress and as its consequences disgrace toward the police.

Amnesty International Report tried to find out the rationale behind the custodial torture by the police. First tacit approval of the society for the use of force against a suspect to detect the crime

Second, psychological factor's including fear psychosis in the minds of suspects and to exaggerated stories of police brutality. There is lack of adequate time and pressure to produce quick result which preclude the use of time consuming and painstaking modern methods of crime detection and finally. Legal impediments which deny police adequate time to interrogation the suspect.²⁵

There are some basic loopholes in the police administration boosting cops to adopt the third degree method for investigation. Supreme Court and National Human Rights Commission should join hands to wipe out the tears of torture victims. Union Home Minister Amit Saha on 50th Foundation day of the Bureau of Police Research and Development in September 2019 said that the age of third-degree torture was over and the police should stay a step ahead of crime and criminal minded through better investigation and forensic evidence.²⁶

1.4.4 Police Remand:

One of the most unconscionable act and coward act of a police is that the person in police custody is being torture by various methods whether mentally or physically. The act of the police is a wound on our constitutional Culture. Article 21 Constitution of India talks about right to life and personal liberty, right to life include living in humane condition, life and limb to be protected even if in police custody. The rough treatment by police for extracting confession or getting information is against

²² Sarangi, Dr Sarita : ' Report on the National Consultation on Prison Reform' , Human Right Law Network , 3-4
April 2010, p 31

²³ Ranaut , Akhilesh: 'Custodial Torture : Socio Legal study of Preventive and Corrective Measures' Sodhganga

(2010) p 194

²⁴ 1967 SC Cr.LJ 1463

²⁵ S. Subramaniam: 'Prevention of Death in Police Custody' CBI Bulletin,1994

²⁶ Singh , Vijaita : ' Age of third-degree Torture is Over Amit Shah tells Police' The Hindu , 28 September 2019



the humanity and violation of basic human right.

The investigating police feel that if they manage to get a confession from the accused they can handle the case very easily and in less time but the torturous method of adopted by them in the method of investigation as it fails in sanity. As provided under section 24 of Indian Evidence Act, 1872 that when the confession of witness is admissible, it is admissible only when the confession is made voluntarily. If it is made under any threat, inducement or promise then it is inadmissible in criminal proceeding. Section 25 of Indian Evidence Act, 1872 talks about that no confession made to the police officer shall be proved against accused person of any offence. Similarly, section 26 provides that confession by the accused person while in the custody of police not to be proved against him it can be proved against him only when it is made in the immediate presence of a magistrate.

Under section 167 Code of Criminal Procedure, 1973 when a person arrested and detained in custody for 24 hours and is forwarded before a magistrate and there are grounds for believing that the accusation or information against the accused is well-founded and the magistrate whether he has jurisdiction or not to try the case authorises the detention of the accused in such custody as it thinks fit. The Magistrate can remand accused to police custody for a maximum period of 15 days.

The purpose of police remand is only to keep the accused under pressure and create a fear psychosis by detaining him in the atmosphere of Police Station, by physical or mental torture in keeping him in long and continuous

interrogation, rejecting sleep and other necessity for long hours, doling out threats or inducement (banned under Section 163 of Code of Criminal Procedure) all factors resulting in accused desperate in expression "I Admit" and ready to sign any statement drafted or dictated by police.²⁷ The magistrate has to record reasons for granting police custody as he has to keep in mind that the police custody is not been taken for malicious purpose. The magistrate should also so observe the distinction between the remand to the police first day as an ordinary remand to the judicial custody under section 344 Code of Criminal Procedure, 1973. The magistrate has to be vigilant enough while giving police remand. The magistrate has to discourage the tendency of a Police officer to take remand for the purpose of extorting confession. Where the object of remand is to prevent the person from committing further offences then he should be remanded to judicial custody.

15 Torture in Judicial Custody

Exploitation has been an old phenomenon as from the ancient times the rich exploits the poor, man exploits women, old exploits the young and the powerful bison exploit less powerful person. There is another society behind the prison wall where prisoners are being denied of their human rights. In the premises of what happened is known as jail administrator. From the fear of facing torture by the jail authorities the principal of silence became the rule of law in the jail for the prisoners and they become pray of torture, inhuman treatment and worst living condition. Prison is a State subject under **Entry 4 of List-II of the Seventh Schedule** in the Constitution of India.²⁸ The

²⁷ Supra Note XXIII

²⁸ Constitution Of India 1950 , Schedule VII , List II , Entry 4



management and administration of Prisons falls completely in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments.

Torture has been used as a sword by the jail authorities in the Indian penal institutions. Delhi's Tihar jail came into limelight by media in 2018, where a 21 year old under trial prisoner was founded in Tihar Jail under mysterious circumstances on 16 June 2018. Where police said that they was informed about incident around 1 p.m. and the deceased was an accused in a minor rape case in outer Delhi's Ranhola area and was in jail since 2015. Official from the jail say that the deceased has allegedly hitting his head against a wall and killed himself. They said that it was a suicide but the victim's lawyer claimed that jail employee killed him and he was being torture by the jail authorities on different occasions.²⁹ Delhi High Court on 11th July 2018 criticized the Tihar Jail official over the "extreme harsh" condition under jails

Prison conditions are very poor across the India. A significant issue that is being looked in the vast majority of the Indian jails is overcrowding of the jails which prompts deficient framework offices and absence of basic support of the jail prisoners. According to a statistics of year 2000 by **National Crime Record Bureau** total available capacity of prison inmate in different jail in India are 2, 11,782 but there are 2, 28,970 prison inmates in jails. That means more

prisoner than capacity and it leads to inhuman living condition violating basic human right of the prisoners.³⁰ The highest overcrowding of the prisoner is in Delhi with 192.13% followed by Haryana 179.72%. In March, 2004, **National Human Right Commission** report indicated that the country's prisons are overcrowded on average by 38.5 percent. The country's prisons have a population of 324852 persons while the authorized capacity is 234462.³¹ As per the statistics published by the **National Crime Record Bureau**, as on 31.12.2008, there were 384753 prisoners in various prisons of the country against its total authorized capacity of 297777 prisoners. Out of this, the number of undertrial prisoners was 257,228 which constitute 67% of the total prison population. The prison is India is overcrowded to the extent of 129%.³² Jail conditions do not follow international standards and most basic facilities such as adequate food, drinking water, sanitation, and health services, in its 2007-2008 Annual Report, the Ministry of Home Affairs accepted that the deterioration of the condition of prisons, prisoners, and prison staff because of inadequate allocations for the maintenance and upkeep of prisons from the States.³³

The main reason for overcrowding is that over 60% of inmates are under trial and the large number of undertrial are the outcome of arrest and remand under Indian law, delay in investigation and trial process and an equal administration of right of bail under criminal justice administration. The reality of

²⁹ 'Undertrial found Dead Inside Tihar Jail Complex' The Asian Ages ,17 th June 2018

³⁰ Inmate Population : National Crime Record Bureau (2000) p 12-13 also available at https://ncrb.gov.in/sites/default/files/psi_table_and_chapter_report/CHAPTER-02_2000.pdf

³¹ National Human Rights Commission Annual Report (2004)

³² 'Overcrowding in Prison': Ministry of Home Affairs , Government of India , 9 May 2011

³³ To Decongest Tihar Jail, High Court says release 600 inmates immediately, The Indian Express , 19 th June 2007



overcrowding as it create a problematic issue for other prisoners such as great risk of diseases, denial of conservancy facilities, difficulties in surveillance , not proper living condition and consequent danger.

Union parliament following the decision of Supreme Court in in *Ramamurthy v. State of Karnataka*³⁴ to bring about uniformity of present law and prepare a draught model prison manual a committee was set up by union in the bureau of police research and development. In 1999 a draft Model Prison Management Bill (The Prison Administration and Treatment of Prisoners Bill, 1998) was circulated to replace the Prison Act of 1894 by Government of India to the states but the Bill is still not finalized. In the meantime a Model Prison Manual was prepared in 2003 relating to the prison reform in India was evolved by National consensus and circulated to all the states for guidance. With the passage of time the ground realities have been understood and felt to revise and update the manual according to the need of time. In 2014, an expert committee was made. Model Prison Manual prepared in 2003. Now, **Model Prison Manual 2016** was finalized with the approval of Home Ministry and circulated to all the States and Union Territories for their guidance. This manual aims at bringing uniformity in the law and rules and regulations governing prison administration and management of prisoner all over the country.³⁵

The Supreme Court, in the matter of *Suo Moto* titled *Re: Inhuman Condition Prevailing in 1382 prisons in India*³⁶ asked the Centre and all States to implement its directions on prison reforms including filling up of vacancies of jail staff across the country and devise a scheme to audit their accounts. The Supreme Court on 25th September 2018 framed a Committee on Prison Reforms led by previous apex court judge, Justice Amitava Roy, to inspect the different issues tormenting jail in the nation, from congestion to absence of legitimate counsel to convicts to issue of reduction and parole.³⁷

A review of the Indian Judiciary's decisions regarding the protection of Human Rights of prisoners shows the fact that judiciary has been playing a role of protector in those situations where the executive and legislature have failed in addressing the problems of the person who has been subject to torture in custody.³⁸

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

1.6.1 National Human Right Commission

It came into effect by the virtue of Protection of Human Rights Act, 1993 on 12th October, 1993. The preamble of Protection of Human Rights Act, 1993 provides for the composition of National Human Right Commission, State Human Right

³⁴ (1997) SCC (Cri) 386

³⁵ Rao , Shri G Ranga and Kumar , Shri Vinod : 'Prison Reforms in India' Member Reference Service Lok Sabha

Secretariat , July 2017

³⁶ Writ Petition (Civil) No. 406/2013

³⁷ Rajagopal , Krishanadas : ' Supreme Court constitute Committee to look into jail reforms' , The Hindu , 25

September 2018

³⁸ Iqbal , Mohd Waquar and Vasudha : ' The Struggle Life of the Prisoners in Indian Jail' , Journal of Legal Studies

and Research (Vol 2 Issue 4) (2016) p13 , also available at <http://thelawbrigade.com/wp-content/uploads/2019/05/Iqbal-Vasundhra.pdf>



Commission in states and Human Right Courts for the better protection of human rights and for related matters. Other state has also set up in their respective state commission which protects the human rights and also deals with the validation cases as well.

National Human Right Commission is an independent body which has vested with the powers to deal with the cases of human right and the decision has a binding effect. National human right commission has similar powers as that of any civil court.³⁹ It deals with the many cases related to human right issues like Suo motu take cognizance of any case which is related to the human right violation, it can investigate on a complaint of human right violation case, protection of Human rights, protection of any citizen from any discrimination being done by any authority, hear and investigate the complaint of human right violation case etc.

There are many functions of human right commission like to make enquiry on the complaints of human right, take action for them it can visit any institutions like jail ,reformative and protection care for the juvenile ,of the Central or State Government. It can give recommendation to the state or Central government for the better working of institution. It's not only works for the human right but also work for the campaign of human right through the publication that is applicable or accessible to the people and also do seminar which create awareness among the people about the human right. It also gives space to the NGOs who work for

the protection of and promotion of human right.⁴⁰

National Human Right Commission has all the powers of civil court⁴¹ like summoning and enforcing the attendance of witnesses and examining the accused on oath, finding and then produce any document, receiving evidence on affidavits, demanding any public record or copy thereof from any Court or office, allotting commissions for the examination of witnesses of documents, having jurisdiction to try the same, who shall proceed to hear the case against the accused.

1.6.2 Human Right Court:

Protection of Human Rights Act, 1993 has distinct feature as it talks about establishment of human rights court. Section 30 emphasized on establishment of human rights court that will hustle up cases of the human rights and solve it rapidly to ensure the end of justice. These courts are to be established in every state. When there is no human right court, the Court of Session will be trying the cases of human rights violation.

1.6.3 Recent National Human Right Commission's Recommendation on Custodial Justice

The National Human Rights Commission (NHRC) in collaboration with Penal Reform and Justice Administration (PRAJA) organized a two-day Seminar on Custodial Justice in March 2006.⁴² The main motive of the seminar was to emphasize on the fact that custodial torture is preventable and it is responsibility of the State to protect the right of accused person in custody.

³⁹ The Protection of Human Right Act 1993 , Section 12

⁴⁰ Ibid

⁴¹ The Protection of Human Right Act 1993 , Section 13

⁴² Also available at <https://nhrc.nic.in/press-release/nhrccs-recommendations-custodial-justice>



The main recommendation of NHRC on custodial torture is related to police set up and the other related to prisons.

iii)

Police set up:-

- i) During investigation the violation in police custody resulting in deaths and physical torture. NHRC emphasize on scientific, professional, humane approach towards person detained for investigation. And also recommend that the investigation needs to be carried out expeditiously and in given time frame. Complete use of scientific techniques and forensic science should be made to obviate resorting to physical torture during interrogation.
- ii) Zero tolerance for any human right violation in custody. In case of any guilt or misconduct it is ensure that penalties should be impose on the police personal for his/her act.
- iii) There has to be a bifurcation in the police personal into two wings one is investigating and the other is law and order duties. And accordingly the investigation wing should be trained in specialized skills for effective and efficient investigation.
- iv) To eradicate torture practice in custody, regular training should be used to change the attitude and mindset of the police personal.

Prison set up

- i) NHRC observe that the number of trials are increasing day by day and the period for which they are in jail is also very long and in some cases it is found that the accused undertrial are in judicial custody for 24 to 25 hours which is beyond the punishment prescribed for any offences under the penal law.
- ii) NHRC requirements for an urgent review of under trial prisoners for not only setting free the prisoners who have undergone their term

of imprisonment but for also taking the additional steps like holding regular special court in the prison for early disposal of case. For the convicted person formation or rehabilitation should be worked out with the development department to expose them with any skills so that they have a better employment opportunity once they are outside custody.⁴³

As torture, inhuman and degrading treatment to the accused person while in custody by the police official is the worst form of human right violation. National Human Right Commission a ray of hope in the darkness for the victim of custodial crimes. They are suppose to investigate the custodial torture, custodial death or custodial violence, custodial rapes etc. cases impartially and fairly to cope up and protect the gross violation of human right. Another the grey area of law is to give compensation to the family of victims but this would not met the purpose it should be stopped at the initial level otherwise the violation of human right would continue till eternity. It has been said that "*Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality it is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward flag of humanity must on each such occasion fly half-mast*".⁴⁴

⁴³ Ibid

⁴⁴ D K Basu v. State of West Bengal, AIR 1997 SC 610