
CUSTODIAL DEATH: “AN UNCIVILIZED ASPECT OF A CIVILIZED SOCIETY”

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ABSTRACT

This research analyses the causes of custodial deaths in India. The article also covers the inadequacy of existing provisions of law. Author has attempted to shed light on the current lacunas in the Indian Police system and has suggested the reforms for the same. Considerable reliance has been placed on the official data of National Crime Record bureau, various judicial decisions and the reports and guidelines of various National Commissions. The objective of the article is to provide solutions for bringing out the transition in Indian Criminal Justice system. International Convention pertaining to this issue has been discussed. Jurisprudence of arrest has been written extensively in this article to show that the offence of custodial death occurs when the arrest guidelines are flouted by the police personnels. A special emphasis has been given on investigation or inquiry by an independent wing, effective mechanisms such as Magisterial Inquiry has been put forth as a remedy to curb this menace. Deductive Method has been followed to reach out to the specific conclusion.

(I) INTRODUCTION

The essence of criminal jurisprudence lies in striking a balance between individual right and the societal interest, where the societal interest is in peril, the individual right can be curtailed but that has to be done in accordance with the procedure established by law. Article 21 of Indian Constitution is considered to be one of the most sacrosanct fundamental right and Custodial Violence/Death strikes a blow not at only at ARTICLE 21 but also at **Rule of Law** as Custodial death is entirely against the procedure established by law.

CUSTODIAL DEATH is an abomination where the police personnel resort to the violent and illegal means to procure confessions or statements from the person in custody and this barbarous practice often leads to the demise of an accused when he is subjected to disproportionate and excessive force by the policeman. In India, five people die in official custody every day.¹ There are cases where persons die in police custody due to the slackness of police when the person under custody is not provided with the required medical aid. There have been instances where the person has committed suicide in police custody due to misconduct of police.

Custodial crimes are more gruesome than other offences as not only its grave but it also shakes our confidence in the public authorities who are our protectors. This leaves us with no option when our own protectors become the predators. It has been seen that the marginalized section of the society have mostly been at the receiving end of this menace as they lack the adequate means to knock the doors of court

(II) MOUNTING CASES OF CUSTODIAL DEATHS

Over the last 20 years, total 1,888 custodial deaths have been reported across India, in which 893 cases registered against police personnel and 358 personnel charge sheeted, but only 26 policemen have been convicted.²

We have lately witnessed the police brutality in **Jeyaraj Beniks case** – where father – son had

¹ Umang Ponder, “In India , five people die in official custody everyday .How does the law deal with these ?”, *Scroll.in* , November 14, 2021, available at <https://scroll.in/article/1010500/in-india-five-people-die-in-police-custody-every-day-how-does-the-law-deal-with-these-deaths> , (last visited on March 3 , 2022)

² Harikishan Sharma , “1,888 Custodial deaths in 20 years , only 26 policemen convicted”, *Indian Express* , November 16, 2021 , available at <https://indianexpress.com/article/india/custodial-deaths-policemen-convicted-7624657/> last visited on March 3, 2022

been mercilessly thrashed in police custody for allegedly flouting the lockdown guidelines by keeping their shop open exceeding the business hours at the time when lockdown was imposed in the state during Covid. The duo had been subjected to horrifying atrocities which led to their unfortunate demise.

Following are the other significant case laws:-

J Prabhavati Amma V State of Kerela³ -

In this case, the man was apprehended by the two police constables from a park, he was found to possess 5000 Rs., which, believing to be stolen money, he was arrested despite having no criminal record and was subjected to third degree torture which led to his demise. A special CBI Court awarded the death sentence to the two policemen and directed them to pay fine of Rs. 2 lakhs each. The Court also awarded 3 years' imprisonment to the other three accused.

Justice K Nazar observed it as a “**rarest of rare crime**”, he mentioned that case is of grave nature as it was committed by law enforcers who were bound to protect the innocent. Their deplorable actions had diminished public faith in the law enforcement system.

Neelabati behra V State of Orissa⁴ - It is the most significant case as this very case turned out the course of custodial deaths in India. **This perhaps was the first case in which an adequate compensation was granted in matter of custodial death.** Prior to the Judgment of this case, there was no structured procedure to grant compensation in cases of custodial deaths. In this case, police had arrested a man for investigation offence of theft. The next day, his dead body was found near railway track. The letter was sent by the mother of deceased to the Supreme Court stating that her son died in police custody after being inflicted with severe injuries. The apex court took suo moto action and converted it into a petition under Article 32 of Indian Constitution.

The Honorable Court made a cogent point that a proceeding under Article 32 before Supreme Court of High Courts is a remedy available in public law and the “**principle of sovereign immunity does not apply in case of public law**”

³ WP(C) No.24258 of 2007 (K) and CrI.R.P.2902 of 2007

⁴ AIR 1993, SC 1960

(III) Causes of Custodial Death⁵

(A) – Primary reasons of custodial death are as follows

- Suicide – There have been cases when accused already possesses some harmful weapon or poison and he ends up harming himself in police custody
- Death due to illness – In no. of cases it has been seen that the accused is extremely sick and due to inadequacy of the immediate medical aid , he succumbs to the illness or Injuries sustained prior to police custody
- Injuries sustained during the police custody because of the physical assault by the police
- While escaping from custody
- Road accidents/Journey connected with investigation

(B) – Section.27 of Evidence Act⁶ – A Garb for Custodial torture

It is a well settled law that confession given to the Police officer is not admissible in a court of law and even the confession given in police custody is inadmissible. This raises the question then why police officers hound the accused when confession given by him in police custody is not admissible?

The answer lies in section 27 of Evidence Act that says , statements that leads to the discovery of fact is regarded as admissible in Court , section.27 is itself an exception of the aforesaid law and it paves the way for the policemen to torture the accused in the garb of getting the discovery statements. It is often said that section.27 gives birth to a giant mischief and this particular section requires a drastic surgery.

(C) – Deprivation of Right to consult a lawyer

Though , right to consult a lawyer is one of important steps to be followed while complying with the procedures of arrest and this right is categorically embedded in *article 22 (1)* of Constitution and *section.41(D) of crpc , i.e.* When a person is arrested and interrogated by the police , he shall be entitled to meet an advocate of his choice during the interrogation , but not

⁵ National Crime Record Bureau , “Reasons of Custodial Death- 2018”, Table 16A.3 , available at https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2016A.3_0.pdf (last visited on March 3, 2022)

⁶ The Indian Evidence Act ,1872, s.27

throughout the interrogation⁷, The emphasis needs to be laid on the last line of the provision, ***during the interrogation but not throughout the interrogation***, this very line creates a loophole for the police through which they don't allow the accused to meet the lawyer, on the pretext of protecting the sanctity of interrogation and depriving the accused of his right to meet an advocate not only serves to the sinister motive of police to torture the accused, but it also vitiates the purpose of Fair Trial.

(IV) Constitutional safeguards against Custodial Death

Article 20 (3) – “No person accused of any offence shall be compelled to be a witness against himself”⁸ which means that No man is bound to accuse himself. It also pertains to the basic principle of criminal jurisprudence, that, “an accused is innocent until proven guilty” and the onus of proof is on the prosecution to prove the guilt of accused beyond the reasonable doubt and accused has the right to remain silent.

In the case of *Nandini Satapathy V PL Dani*⁹ – The honorable Supreme Court ruled that the objective of **Article 20(3)** is to protect the accused from unnecessary police harassment and its protection extended to the stage of police investigation apart from trial procedure

Article 21 – states that – No person shall be deprived of his life and personal liberty except according to the procedure established by law.¹⁰ Article 21 is of widest amplitude and it paves the way for so many rights to exist. The term **“life and personal liberty”** encapsulates the protection against the torture and harassment in police custody. The accused in custody must be allowed to meet his family members, relatives and even Journalists.

Supreme Court in *Sunil Batra V Delhi Administration*¹¹, states that, We find no reason, why right to be visited under reasonable restrictions, should not be claimed as a constitutional status. We hold that, subject to discipline, that liberal visits by close friends, family members and legitimate callers are part of prisoners' kit of rights and shall be respected.

In case of *Penedumaran V State of Tamil Nadu*¹², Supreme Court ruled that – deprivation of a right of a friend to visit a prisoner is unreasonable and arbitrary, it's no longer a facility or

⁷ The Code of Criminal Procedure, 1973, s.41D

⁸ The Constitution of India, art.20(3)

⁹ 1978 AIR 1025, 1978 SCR (3) 608

¹⁰ The Constitution of India, art.21

¹¹ 1980, AIR 1579, 1980 SCR(2), 557

¹² Criminal Appeal No.749 of 2003 and 750 to 752 and 764 to 766 of 2003

privilege, and it is elevated to the status of fundamental right of a prisoner to have an access to a relative or a friend.

In *Francis Coralie Mullin V Administrator, Union Territory of Delhi*¹³, Supreme Court, states that. No prison regulation or any procedure laid down by any prison regulation regulating the rights of prisoners to meet his family will be valid under Articles 14 and 21, unless it is just and reasonable.

Article 22¹⁴ – (1) – provides the right to be informed, as early as possible, of the grounds of arrest and a right to consult a legal practitioner, so that the accused could get a reasonable opportunity to apply for bail, to prepare for his defense and most importantly, to ensure that he does not get subjected to ill treatment in the police custody

(2) – The accused must be presented before Magistrate within 24 hours of arrest , so that the Magistrate could examine the legality of arrest and accused can speak out his grievances before the Magistrate if any unjust treatment is meted out to him.

(V) – Other Statutory Provisions for the protection are

(A) -In Evidence Law, **S.25** suggests that confession made to the police officer is inadmissible and cannot be proved against the accused of an offence, in court of law.

The term “accused of an offence” means a person against whom an evidence is given in a legal proceeding

In addition to the aforesaid law, **S.26**, states that confession made by in a person in police custody is not admissible and to make the confession admissible, immediate presence of Magistrate is required while recording the confession¹⁵

In *Raja ram V State of Bihar*¹⁶, **Justice Mahmood**, observed as follows – “This creates no suspicion in my mind that misdeeds of police officers were present before the legislature in which they had gotten confession forcefully so that they might get award by getting them convicted and those misdeeds reached up to insaneness”

¹³ 1981 AIR 746, 1981 SCR(2) 516

¹⁴ The Constitution of India, *art.22*

¹⁵ The Indian Evidence Act, 1872, *ss. 25, 26*

¹⁶ AIR 1964 SC & 228

Section.330 of IPC – Whoever voluntarily causes hurt to the sufferer in order to extort any confession, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.¹⁷

Exception 3 of S.300 of IPC, says, that if the public servant exceeds the power given to him by law and causes the death of any person, then he shall be liable for an offence of culpable homicide not amounting to murder

(B) – To tackle the menace of Custodial death , a procedure of parallel Magistrate enquiry , immediately after the incident has been provide by law under **S.176 of Crpc** ,

S.176 (1) – states that a Magistrate, who is empowered to hold inquests in cases of unnatural death, may hold an enquiry into the cause of death either instead of, or, in addition to investigation held by police officer.

This provision uses the word “may” which means that it is the discretion of Magistrate to conduct such enquiry.

The **Law Commission of India** took suo moto cognizance of an alarming rate in increase in cases of Custodial Violence/death and introduced **S.176 (1A)** and **S.176 (5) in Crpc**.

S.176 (1A) – is a special provision to deal with the cases of death, disappearance or rape in police custody. The provision says that in such cases, the Judicial Magistrate or Metropolitan Magistrate, within whose local jurisdiction the offence has been committed, shall conduct an enquiry in addition to the investigation held by the police. This provision uses the word “shall” which insinuates that it is mandatory for Magistrate to conduct such an enquiry.

S.176 (5) – The Magistrate holding an enquiry shall , within 2 hours of the death of a person , forward the body for the purpose of being medically examined to the nearest civil surgeon and , in case, it is impossible to do so , reasons for the same have to be recorded in writing.¹⁸

(C) – Non conformity of S.176 (1A)

It is pertinent to note here that since the introduction of S.176 (1A) , it has not been properly implemented at the ground level , and it’s shoddy execution gave rise to plethora of cases

¹⁷ The Indian Penal Code, s.330

¹⁸ The Code of Criminal Procedure , s.176

pertaining to custodial death. Since the enactment of S.176 1 (A), NHRC has recorded 24,083 custodial deaths.

(VI) – Guidelines for conducting Magisterial Enquiry¹⁹

Following Guidelines should be followed while conducting Magisterial enquiry in cases of Custodial death

- Magisterial enquiry should be initiated as early as possible without undue delay
- The Enquiry Magistrate should visit at the place of incident in order to get acquainted with the required facts. During the visit to the place of occurrence, Enquiry officer should try to identify the natural witnesses who might have been present at the crime scene. Enquiry officer should take them into confidence and record their statements
- .In most of the cases, family members of the victim describes the version of a police officer who has actually planned out the encounter of the deceased. The version so given should be investigated outright to determine the truthfulness of it.
- A public notice be issued in vernacular newspapers to intimate the witnesses concerned with the enquiry. A reasonable opportunity should be given to the family members of victim while recording their statements

Magisterial enquiry should cover the following aspects:

- a.) circumstances of death
- b.) the manner and sequence of incidents leading to death
- c.) cause of death
- d.) Any person responsible for death or any suspicion of foul play that emerges during enquiry
- e.) Act of commission/omission on part of public servants that contributed to death
- f.) Adequacy of Medical treatment provided to the deceased

¹⁹ National Human Rights Commission, India, “Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action. ”available at https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf (last visited on March 3, 2022)

Following reports should be examined and verified by the Enquiry Magistrate –

- a.) Inquest Report
- b.) Postmortem report: It has been noticed that Enquiry officer analyzes the post mortem report in a cavalier and causal manner and no attempt is made to ascertain its veracity. Postmortem report should be analyzed meticulously and if required, help of state FSL should be taken.
- c.) Viscera analysis report
- d.) Histopathological Examination report
- e.) Final cause of death
- f.) MLC report/ Initial health screening report
- g.) Medical treatment records
- h.) Inquiry/Investigation report of police
- i.) FIR/General Diary
- j.) Ballistic examination report of weapons and cartridges, alleged to be used in the incident by the deceased
- k.) Forensic examination report of ‘hand wash’ of deceased
- l.) Finger print expert report on finger print impression available on weapon alleged to have been used by the deceased

Magistrate should thoroughly examine the family members of deceased, eye witnesses who are well acquainted with the facts of case, doctors who have conducted postmortem or has provided treatment to deceased, concerned police officials, co prisoners and independent witnesses.

The Magistrate, while writing the report, should make sure that his report contains the gist of the statements recorded, documents examined, discussion on allegation proved or not proved and the grounds on which the conclusion has been drawn out. Magisterial Enquiry report (MER) should also contain definite opinion on circumstances that led to death, whether the

action taken was justified and lawful. Any act of omission/commission on the part of public servants and names of officials responsible for death must be written in the report.

(VII) Observations of National Human Rights Commission and the directions issued by it²⁰

National Human Rights Commission issued a direction to District Magistrates and Superintendents of Police of every district that they should report to the Secretary General of the Commission about the incidents of Custodial deaths within 24 hours of occurrence of such incidents, and, on failure to do so, it shall be presumed that an attempt has been made to suppress the material fact.

The objective of the commission is to gather information pertaining to the incidents of custodial deaths not only in police custody but also in judicial custody. Thus, death occurring in judicial custody must also be reported to the commission within the given time frame.

NHRC has greatly stressed on the importance of Postmortem report as it is a crucial and a valuable record and considerable reliability is placed on this document in order to reach out the conclusion about death. However, the analysis of these reports by the commission often indicates that postmortem, in numerous cases, has not been carried out properly. Postmortem reports are usually made in a casual fashion and this defeats the purpose of ascertaining the cause of death. The commission observed that a deliberate attempt is made to suppress the truth and the reports reflect the ulterior motives of the police and their version of the incident. The commission has formed an impression that somewhere local doctors get succumbed to the police pressure, which ultimately, leads to the manipulation of facts, Therefore the commission has directed that all the post mortems in respect of death in police custody or in jails should be video filmed and recording of the same be sent to commission along with the post mortem report.

(VIII) Jurisprudence around arrest and custody

Custody and Arrest are not synonymous terms and observed that it is true that in every arrest there is a custody but not vice-versa. Custody may amount to arrest in certain cases, but not in

²⁰ National Human Rights Commission, India , available at <https://nhrc.nic.in/press-release/nhrcs-recommendations-custodial-justice> (last visited on March 3, 2022)

all cases

Though there is no specific definition of arrest in criminal law but Arrest can be defined as apprehension of a person by legal authority that leads to total deprivation of his liberty. It is pertinent to be mentioned here that every compulsion or physical restraint does not amount to arrest, for constituting arrest, total and complete deprivation of liberty is required

Arrest of a person is likely to be necessary in the following cases:

- *To secure the attendance of an accused at the trial* – When a person is charged of an offence , his presence at the time of trial becomes essential , if his attendance is unable to be ensured by issuing summons to him , then probably his arrest becomes the only way to secure his presence at the trial
- *As a preventive or precautionary measure* – If it is inevitable that a serious offence is likely to be committed then arrest of the person intending to commit such crimes becomes imperative.
- *For obtaining correct name and address* – When a person refuses to tell his name and address , when it is asked by a police officer , then , it would be appropriate , on the part of the police to arrest such person in order to discover his correct name and address
- *For removing hindrance to police* – Whoever hinders a police officer in performing his duty, and then such person would be liable to be arrested.
- *For retaking a person escaped from custody* – A person who has escaped from lawful custody should be arrested immediately by the police.²¹

The need for having more transparency in the accused – police relations has been emphasized by Supreme Court in *Joginder Kumar case*²², in it , following rules have been formulated :

a.) An arrested person being held in custody is entitled, on his request, to have one friend, relative or other person who is known to him or likely to take an interest in his welfare, told, as far as practicable that he has been arrested and where he is being detained.

b.) The police officer shall inform the arrested person, when he is brought to police station of his right,

²¹ R.V. Kelkar's *Lectures on CRIMINAL PROCEDURE INCLUDING PROBATION AND JUVENILE JUSTICE* , 24, 25 (EBC Publishing (P) Ltd., Lucknow, 6th edn., 2017

²² (1994)4 SCC 260; 1994 SCC (Cri) 1172; 1994 Cri LJ 1981

c.) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from *Articles 21* and *Article 22 (1)* and enforced strictly.

The Magistrate is obliged to satisfy himself that these requirements have been complied with.

Supreme Court in *D.K. Basu case*²³ has issued the following instructions:

a.) The police personnel carrying out the arrest and handling the interrogation of the arrestee shall bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be held in a register.

b.) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of arrestee or a respectable person of the locality from where the arrest has been made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

c.) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

d.) The arrestee should, on his request, be also examined at the time of his arrest and major and minor injuries, if any present on his body, must be recorded at that time. The 'Inspection Memo' must be signed by both the arrestee and police officer effecting the arrest and its copy provided to the arrestee.

e.) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on a panel of approved doctors appointed by a Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well

f.) Copies of all documents including the memo of arrest should be sent to the Illaqa Magistrate for his record.

g.) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

²³ (1997) I SCC 416; 1997 SCC (Cri)92

h.) A police control room should be provided at all districts and State headquarters , where information regarding the arrest and place of custody of arrestee shall be communicated by the officer causing the arrest , within 12 hours of effecting the arrest and at police control room , it should be displayed on a conspicuous notice board.

(IX) Steps that need to be taken by the police to do away with Custodial Death

Although, interrogation of an accused in custody is imperative, but at the same time, a reasonable balance needs to be strike down, so it has to be strictly bear in the mind of police personnels that no law permits them to use excessive force for torturing the person in custody, so, no person, being interrogated, be subjected to harassment and no death should occur in police custody.

Following are the steps for an effective interrogation:-

- a.) The concerned officer must be acutely aware of minute details of the incident, which, will enable an officer to ask the relevant questions from the person in custody.
- b.) The officer must be acquainted with the criminal antecedents of an accused so that he would be able to unveil the concealed fact
- c.) If the accused persons are in plurality, i.e. more than one, then every accused must be interrogated separately, because, in a joint interrogation, an accused may alter his answers on listening to the statements of co – accused
- d.) An accused should be searched thoroughly before his entry in the police lock up and if he possess any harmful weapon or a poison, then it must be immediately seized by the police. This search is essentially required in law so that the accused do not end up killing himself.
- e.) Any police officer who has not been a participant in the arrest of accused, the same shall not be allowed to be a part of interrogation team, because such policemen might injure the arrested person and then the accountability will be imposed on the officers who have arrested an accused.
- f.) If an arrested person is maimed or sick, he should immediately be provided with the required medical aid by the police
- g.) There should be a separate lock ups for male and female
- h.) Surprise visits to the police station must be conducted by the senior officials in order to give an opportunity to accused to say his grievances and with a view to ameliorate the conditions of police stations

i.) The Magistrate must enquire to the accused presented before him, whether he has any complaints of torture or harassment in police custody

Parambir Singh Saini V Baljit Singh²⁴ (Installation of CCTV cameras)-

Supreme Court has directed the Center to install the CCTV cameras in all the police stations and other central agencies such as CBI, ED, NIA, NCB and in case of any human rights violation by any investigative agency, victim will be entitled to get a copy of CCTV Footage of interrogation and can also approach NHRC, or State Human Rights Commission or any other authority empowered to take cognizance

(X.) International Convention against Torture and other cruel, inhuman or degrading treatment or punishment²⁵

“No one shall be subjected to torture and any other cruel, inhuman or degrading punishment.”

As per the convention, the torture is defined as any act by which the acute pain or injury (including both physical and mental) is inflicted on the body of an individual in order to procure confession from such individual who has committed an offence or is suspected to have committed an offence.²⁶

The convention has made it mandatory for the state parties to take effective steps in stopping such acts in any area that falls under its jurisdiction. The convention has categorically denied any justification to invoke the practice of torture, whether it be a state of war, threat of war, political instability or even an order from a superior officer, nothing of such sort could be put forth as an excuse to torture the person in custody.²⁷

The state must not extradite a person to another state in which there are reasonable grounds to believe that he would be in the peril of being subjected to torture²⁸. For example, currently, there is a lot of chaos, danger and instability in Ukraine, so as per the convention, No state shall send its person in custody to Ukraine when it's apparent that massive human rights violation is

²⁴ SPECIAL LEAVE PETITION (CRIMINAL) NO.3543 of 2020

²⁵ UNITED NATIONS HUMAN RIGHTS, OFFICE OF THE HIGH COMMISSIONER, “*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*” available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx> (last visited on March 3, 2022)

²⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *art. 1*

²⁷ *Ibid*, *art.2*

²⁸ *Ibid*, *art.3*

taking place over there. It is for the State Parties to make sure that every act of torture is considered as an offence under its domestic criminal law and would be appropriately penalized accordingly.²⁹

The State parties must make sure that education and information pertaining to the prohibition against torture is entirely included in the training of law enforcement personnel, medical personnel and public officials who are involved in the custody or treatment of a person who is arrested or detained.³⁰

Rules for interrogation and practices and arrangements for custody must be kept getting reviewed with an objective to prevent any cases of torture³¹. State is duty bound to ensure that in case, a person alleges to have been subjected to tortures and the reasonable grounds exist for the same, then such person should be entitled to complain and get a fair and impartial investigation by the competent authorities and further steps should be taken to ensure the safety of complainant and his witnesses against the browbeat by the officials.³² State must ensure that any victim of torture, gets fair and adequate compensation, and in case the victim dies, his family will be entitled to full compensation.³³ Any statement which is the outcome of a torture shall not be used as evidence against victim.³⁴

India has signed the UN Convention against torture but it has NOT ratified it. This implies that this convention shall not be binding against India and therefore cannot be invoked at any international platform against any activities that falls within the purview of torture's definition in the convention.

(XI) Recommendations for reforms³⁵

Inquiries can be conducted by an independent authority. The officers of superior rank can play a crucial role in warding off this menace, complaints against the police can be dealt with by the officers of higher rank in police hierarchy, a surprise visit can also be done to evaluate the

²⁹ *Ibid*, art.4

³⁰ *Ibid*, art.10

³¹ *Id*, art.11

³² *Id*, art.13

³³ *Id*, art.14

³⁴ *Id*, art.15

³⁵ The National Police Commission (NPC), *First Report*, available at https://humanrightsinitiative.org/old/publications/police/npc_recommendations.pdf (last visited on March 3, 2022)

ground level working conditions of police lock ups. Judicial enquiry should be mandatory in certain offences in regard to complaints against the police, such as in the cases of alleged rape of a woman in custody, death or a grievous hurt caused in police custody, death of two or more persons resulting from police firing in the dispersal of unlawful assemblies.

Judicial enquiry should be conducted by Additional Sessions Judge who can be nominated in every district, for this specific objective, by state Government in consultation with the High Court. He will be designated as District Inquiry Authority (DIA), the DIA shall furnish the report of enquiry to the State Government and it would be mandatory on the part of State Government to publish the report and decisions taken on it within two months of receipt.

The DIA should be made as an Independent Authority to overview the final disposal of cases dealt with departmentally. Police Complaint Board should be set up at the state level in order to ensure the effective implementation of the entire scheme.

(XII) Conclusion

India must ratify the UN Convention against the torture, as on ratifying, it would be an obligation on the part of India to take effective legislative, administrative and judicial steps to curb the horrifying incidents of custodial torture, The Government of India should look forward to enacting a suitable legislation specifically against the violence by public officials, such law should be enacted in consonance with the relevant International convention and basic human rights. Further, The Government should immediately comply with the recent directions issued by the Honorable Supreme Court, regarding, the installation of CCTV cameras in all the investigative agencies.