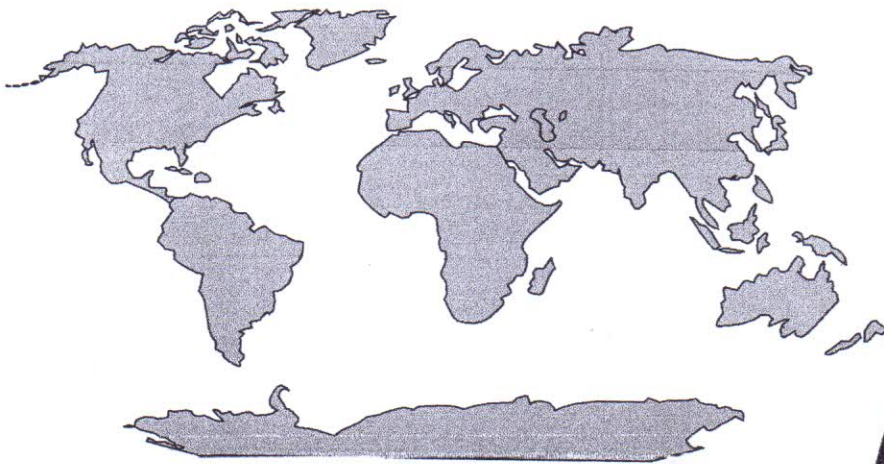
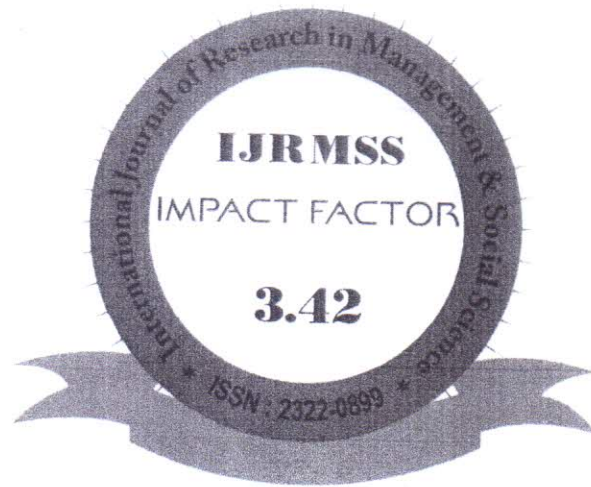


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CUSTODIAL VIOLENCE AND HUMAN RIGHTS: LEGAL IMPLICATIONS

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**ABSTRACT**

*Police in India have functioned as the principal law enforcement agency of the State throughout the ages. In the early and medieval periods of civilization, the governance of a State was entered in ruling individuals or family groups. Police enforcement of the law as propounded by the ruler practically meant regimented compliance of the rulers' demand and desires. The basic concept of governance in India was Dharma and Danda and there were functionaries to ensure the operation of Danda.*

*But as the society advanced, the police tried to control the whole state of affairs in the name of maintenance of law and order situation in a brutal manner. The police, now a days, has started abusing their powers entrusted by the State resulting into custodial violence. In spite of the fact that every segment of the society feels concerned about custodial violence, over the years, it has remained unabated. It seems to be on rise every year, in spite of the increasing literacy and growing awareness among the public about their rights and duties. The main arm of the criminal justice system that deals with people in custody is police. It is, therefore necessary to find out ailments, which govern the agency resulting into abuse of those who are there in their custody.*

*Key Words: Custody, Violence, Police, Dharma, Danda*

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**INTRODUCTION**

Police in India, throughout the ages, have functioned as the principal law enforcement agency of the State. In the early and medieval periods of civilization, the governance of a State was entered in ruling individuals or family groups. Laws of the State were the individual rulers felt inclined to pronounce as such from time to time. Police enforcement of the law as propounded by the ruler practically meant regimented compliance of the ruler's demand and desires. The basic concept of governance in ancient India was of Dharma and Danda and there were functionaries to ensure the operation of 'Danda.'

The term 'violence' is the state or quality of being violent, excessive unrestraint or unjustified force, outrage perforce injury. 'Violence' in its literal sense has been defined as the use of force by one person over another so as to cause injury to him. The injury may be physical, mental or otherwise. The simple definition of violence is behaviour designed to inflict injury on a person or damage to property. Custodial violence is a term, which is used for describing violence committed against a person by a police authority. Thus, custodial violence can be defined as "an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered." According to Law Commission of India, crime by a public servant against the arrested or detained person who is in custody amounts to custodial violence

Although, overcrowding, malnutrition, unhygienic conditions and lack of medical care are some of the factors of death in police and judicial custody, but custodial violence remains the common cause of deaths in prisons and lock-ups. The custodial violence is a generic term and includes all and every type of torture, third degree, harassment, brutality, use of force not warranted by law, etc. custodial violence include illegal detention, arrest which is wrongful or on illegal or on insufficient grounds using third degree method, on the suspects, humiliating them, using filthy language, not allowing them to sleep, extorting confession under pressure, padding up of additional evidence, misuse of the power regarding handcuffing not allowing to meet counsel or family member to accuse, denial of food etc.

**CUSTODIAL VIOLENCE**

The term custodial violence has not been defined under any law. It is a combination of two word custody and violence. The word 'custody' implies guardianship and protective care. Even when applied to indicate arrest or imprisonment, it does not carry any evil symptoms during custody. In a law dictionary the word 'custody'; has been defined as charge and with regard to a person in imprisonment: judicial or penal safekeeping. As Per Chamber Dictionary, the condition of being held by the police, arrest or imprisonment is called 'custody'. As Per Legal Glossary Dictionary, custody is imprisonment, the detaining of a person by virtue of lawful Power or authority.

Section 167 of the Code of Criminal Procedure speak about two type of custody i.e. police custody and judicial custody. As per section 167(1) of Cr. P.C., "the magistrate to whom an accused person is forwarded under this section may whether he has or not has jurisdiction to try the case, from time to time, authorize the detention of



the accused in such custody as he may think fit. Provided that the magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days if he is satisfied that adequate ground exist for doing so. So as per section 167 (1) of Cr. Pe. 'police custody' can be granted for a maximum period of fifteen days only' Police custody basically means police remand for the purpose of interrogation. In law actually a police officer has two occasion to keep a person in its custody firstly, from the period when he arrest a person till he produce the said person in the court i.e. first 24 hours of the arrest of accuse. Secondly, when police gets, remand from court after producing the accuse in the court which can be extend up to a maximum period fifteen days, thereafter, a person is sent in judicial custody which in general terms means jail or prison, where an accuse remain in custody till he gets bail or if convicted and sentenced to jail till the completion of sentence. As per law, 'custody' of a person begins when the police arrest him.

Custodial violence primarily refers to violence in police custody and judicial custody. Besides death, rape and torture are two other forms of custodial violence. Custodial violence is not a recent phenomenon. Sections 330, 331 & 348 of IPC; Sections 25 & 26 of the Indian Evidence Act; Section 76 of CrPC and Section 29 of the Police Act, 1861 were enacted to curb the tendency of policemen to resort to torture to extract confessions etc.

### **HISTORICAL PERSPECTIVE**

Custodial violence, which includes torture, death and other excesses in police custody or prison, is not a new phenomenon. It has been in the world for ages. The law enforcement agencies had been practicing this on prisoners, criminals and the wrongdoers. Even in ancient Indian history, we find ruler like 'Nanad' Mahapadam in Mauryan era who had put the entire family of 'Chandra Gupta Maurya' into prisons and only as much food was provided to entire family which was sufficient for survival of one person only. Kautilya in Arthashastra, speaks about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephant and bulls, cutting of limbs and mutilation etc. During the Gupta period (A.D. 320-500 A.D.) trial by ordeal was common. In the post Gupta period, torture of prisoners became a method of punishment.

In the Mohammedan period the Shariat, law was applied to crimes; a thief hands to be cut off; life for life; tooth for tooth was the basic principle of Muslim criminal Jurisprudence which is still followed in Islamic country. The British Raj was also notorious for using violence in police custody. Men, women and children were caught, beaten and tortured to make them confess to crimes, which they did not commit. During this period political workers were picked up for questioning and if they did not provide the desired reply they were subjected to torture. The naked lying on ice, the denial of food or insufficient quantity of food, excess physical work and physical beatings were some of the methods employed during British Rule to punish law breakers mostly political prisoners and workers.

One important point which needs to be mentioned is that the perpetrators of atrocities and immoral acts were the servant of the foreign Government. Their judiciary, police, jails and all the laws were made for their own benefit and convenience. But we in independent India follow the same model and the same penal code without many amendments. Our police system is same which was prevalent during British system. It was introduced by Britishers; in the year 1861 primarily to enable their administration to have at their disposal a force at a cheap cost to help them rule the country by suppressing anti governmental forces and guided by such an objective the police became the symbol of colonial repression and were for obvious reason hated by the masses. The "Prison Act", which was passed in 1894, has also remained unchanged. The Act gives vast power to jail officials to punish prisoners if they break jail rule. Probably mind set of peoples as well as police and rulers i.e. executives both political and bureaucracy has remained same only power has been transformed from foreign ruler to our native ruler.

The phenomenon of custodial crime is not new in India. We had reference of Torture and violence with the police in India, even since the Vedic age (2000-1400 B.C.). The ordeals of fire, water and single combat were used. In the Epic period (1400-800 B.C.) torture was practiced on prisoners by the police. Torture in various forms was widely prevalent in age of laws and philosophy (800 B.C. -320 B.C.). Kautilya's Arthashastra speaks about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, cutting of limbs and mutilation etc. Manu, the law giver of this age emphasized the necessity of torture to protect the society from the hands of the criminals. The Buddhist period (B.C. 300-300 A.D) was an age of great humanitarianism and administration of justice had become correspondingly imbued with the humanitarian ideals. Torture in any form was strictly forbidden and special favours were shown to prisoners, who happened to be women, aged or who had many dependents. In Gupta Period (A.D. 320-500) if the facts against prisoners were not clearly established by evidence, recourse was to be held to the four kinds of ordeals, trial by ordeal fairly common. Under the Mughals, no criminal or civil code existed. Torture to extort confession was widely spread (Ghosh and Rustomji 1993).



## CAUSES OF CUSTODIAL VIOLENCE

In spite of the fact that every segment of the society feels concerned about custodial violence, over the years it has remained unabated. It seems to be on rise every year, in spite of the fact that rate of literacy has increased and the people have become aware about their rights and duties. The main arm of the criminal justice system that deals with people in custody is police. It will, therefore, be necessary to find out ailments, which govern this agency resulting into abuse of those who are in their custody. In this section, an attempt is made to find out as to what lies at the root of the problem of custodial violence. For this it is essential to study the conditions under which police works and to find out their mode of operation in dealing with the accused persons. The basic causes for Custodial violence can be grouped in the following categories:

### 1. Work Pressure

The police in India has to perform a difficult and delicate task in view of the deteriorating law and order situation, riots, political turmoil, student unrest, terrorist activities, increasing incidence of bribery, corruption, tax evasion, violation of fiscal laws, smuggling and money-laundering. Organised criminal gangs are gaining strong roots in the society. They use ultra-modern weaponry, explosives and many other devices of committing crimes without leaving any evidence of their crime many a time. Similarly, dealing with insurgent and terrorist groups is also completely different from dealing with ordinary criminals. This category of criminals is well-trained, hardened and equipped with ultra-modern weapons. An ordinary policeman carrying a small revolver or even a gun ordinarily provided to him is invariably no match to them. Indeed, a resourceful criminal can escape the clutches of law almost indefinitely. The Indian police today finds itself handicapped not in its numerical strength but its inadequate infrastructural facilities like modern weaponry and equipment, transport and communication network and, more importantly, need-based training which is of paramount importance to make it more efficient and effective instrument of law enforcement.

A very important reason for continuing brutal behaviour by the Police is pressure. The sources of pressure are several, but basically they relate to performance or output beyond the narrow confines of police role, in spite of constraints on adequate role performance. Policemen have to deal with crime and disorder not on bits of paper but in the raw, directly. This generates lot of pressure, both from the people and the government. In addition to the constraints of the system are the constraints arising out of its actual operation. The outcome of Police efforts as they lead to deterioration of evidence and thereby reduces the chance of conviction in a court of law. Medical and legal reports are often received very late. TIP's (Test Identification Parade) are often delayed considerably, before which the accused are bailed out, thus defeating the purpose of holding such a parade. In our accusatorial system, a person is presumed innocent unless his guilt is proved beyond reasonable doubts and thus, the degree of proof, which is required on part of prosecution, to secure conviction is exceedingly high. Thus, in a trial the chances of conviction are roughly one out of four. But results have to be achieved as quickly as possible or else the officer is transferred. So a shortcut is required to achieve result and for them, the UP Police Commission 1970-71 observed,

“An accused or suspect may be kept under Police custody for a maximum period of 24 hours as per law. In the meanwhile, a great deal of information remains to be elicited from the suspect especially in offences involving property, on recovery of which the success of prosecution greatly depends. Whenever the investigating officer finds it practicable, he records arrest after quite a few days of unrecorded and illegal detention. Thus the pressure of securing maximum information in the available time implies the investigating officer to use shortcut methods.”

### 2. Greed for Money

This is the most hateful reason for custodial torture and one that seems to be on the increase. At the level of Police Station, a number of Policemen use brutality to extract money from suspects and innocent persons. The legal situation and the nature of evidence facilitate the process of making SHO very powerful and giving what he does an air of finality, which gives him the unintended power to extract money and escape the corrective process of supervision. The courts give enormous importance to the FIR and what kind of FIR is actually written depends on the policeman on duty. Investigating a dacoity case, he can always threaten to implicate an honest man, even beat him up or simply keep him hanging about the police station until he gives him money. Supervision takes place after the fact and while an attempt can be made to punish the policeman concerned, it can seldom undo the wrong done, recover the evidence that has deteriorated. Each and every person gives the priority of money, they want money anyway, and this is mental condition of our primitive to higher society. For that in Police system made chains from minister to police. Now a day police machinery a means for producing money for officers and minister. In each police station have some cost, if any police ready to pay such amount they got the post at that particular location.



### 3. Punitive Violence

There are few honest but misguided policemen who believe in not letting the criminal get away with it. It is genuinely believed by them that except for a sound beating, there is no other way of controlling criminals. U. P. Police Commission 1970- 71, stated.

"The reason for use of third degree method is born out of wrong convictions. There is cross-section of the people and the police and a sizeable one at that, which believes in the efficacy of third degree methods alone in dealing with criminals, particularly hardened ones. They say that a jail term is no more a deterrent to the criminals. They remain happy there, particularly as conditions inside the jails have begun to score over conditions outside and the only thing they are scared is a beating by the police. It is not unusual to find rotaries against third degree methods pleading for use of 'police methods' for working out a case in which they happen to be interested."

The whole tenor of the criminal justice system is punitive, hence a subsystem of it expected to be of service to the people cannot so operate. On account of the constraints of the system, the nature of the police function also becomes punitive, and many policemen see their brutality as extension of the punitive role of the organisation.

### 4. Positive re- enforcement

No matter what the constraints are, results have to be produced. As things are, a policeman, say a sub Inspector, who is brutal, who operates only on short cuts and is unscrupulous about the means he uses, produces results. The production of result ease the pressure on his superiors, even wins the acclaim of all and sundry, with the result that all his sins are and have to be forgiven. In due course and sometimes earlier, such a policeman rises in his hierarchy. This reinforces his use of third degree methods not only in his own eyes but also in the perceptions of his peer group and his subordinates. Sometimes the expertise at third degree of some policeman receives such wide appreciation that other policeman confronted by an intractable situation or a case, requests for his assistance. He then goes like a superior performer 'tackles' the suspect and produces results, gathering a reward in the bargain. This constant positive reinforcement of third degree method when it produces results is a very important cause of violence by Police in custody. Thus, positive reinforcement of Police violence takes place because it produces results and produces them fast, at least quicker than otherwise.

### 5. Police Sub- culture

The police sub-culture is the sociological side of the same coin. What it amounts to is the belief that a policeman reacts to a situation in a manner peculiar to him as a policeman and thus different and identifiable from how other people would react to the same situation. The sub-culture of our police includes use of third degree methods. The police sub -culture is strengthened by alienation, cynicism, law-estem in society, a degree of pariah feeling, conflicting demands made of policeman, inconsistent judgment of their work, all forcing them into a corner. In this situation a policeman finds succour among others of his community with whom he identifies, leading to group solidarity, which in turn provides a sense of security against the hazards of his occupation, and a basis for a medium of self-esteem and some social affiliation in spite of the irregular hours of his work. Thus develops the culture of group that which demands greater conformance to threats, tortures, rather than rules, regulations, orders etc. However can one explain the fact that a young man of good family, trained in a reasonably good manner, starts behaving, within a few years only and particularly if he is in an operational rank such as that of sub inspector, in a brutal manner, true to the stereotype of his profession in general and rank in particular.

### 6. Lack of Proper Training

Lack of proper training to the Police officials, often result in use of third degree methods. The utterly inadequate training given to constables, the general absence of any attention to the necessity for keeping temper, being civil and respectful to the public, avoiding brutality or unnecessary harshness, are the factors that which leads to violence. Gore committee on Police Training 1972, was of is the view that one of the objectives of training should be to inculcate the right attitude towards the public which consists is never forgetting that the civil servant is the servant and not the master of the community. However, unfortunately, till date no adequate training with the objective mentioned, has yet been provided to police. Police should be given proper training which should include a separate course to impart them knowledge about the human rights and that they are here to protect the human rights and not to infringe them.

### 7. Other factors

Apart from the reasons mentioned above, the other reasons for custodial torture can be sexual weakness, sadism etc. Male police personnel may have a tendency of attraction towards opposite sex prisoner. For satisfaction of this lust he may use force and commit rape in the custody or he may use his official position to obtain consent



for sexual intercourse. An amendment has been made in the IPC, 1860 to provide for stringent punishment for those officers, who use their official position to obtain consent of female prisoner in the custody for having sexual intercourse with them. The third degree methods are also applied for 'teaching a lesson' or 'vomiting out anger'. It is the stage, where professional competence of the individual policeman surrenders before a situation and then he almost goes out of his mind. This can be averted if the policeman could keep their cool, not be overcome or torn by emotions, maintain a philosophical detachment and as a parallel requirement, have sufficient professional skill.

Another reason of custodial violence can be the social factor. In our country, we are accustomed to think in terms of 'an eye for an eye' and 'tooth for tooth'. Therefore, the Society tacitly expects and approves the use of violence on suspects to get the truth. Complainants themselves urge the police to use force or violence to break a suspect. Therefore, in a Society, where the public are indifferent to the use of force on fellow human beings, policemen gets, as it were, social support for these illegal acts.

- a) The third degree is a short cut to quick results. As per the report of National Police Commission, an investigating officer is able to devote only 37% of his time in investigation while the rest of his time is consumed in law and order duty, VIP and security duty, court attendance and other miscellaneous duties. The result is naturally short cut and extra legal.
- b) Lack of knowledge of application and experience of scientific methods in crime investigation and interrogation of accused. Inadequate training etc.
- c) Sometimes society expects police to take tough action not sanctioned by law against criminals. Use of third degree is their service right and accepted part of profession.
- d) Political and bureaucratic influence and interference, collusion with rich and influential people and dancing to their tune.
- e) They feel immune to the fact that whatever they will do won't be questioned.
- f) Disproportionate ratio between crime rate and manpower.
- g) Lack of effective supervision and inspection of Police Station by superior officers.
- h) Delay in trial gives more time to interrogate.
- i) Erring police officials go unpunished due to lack of evidence.
- j) Psychological aberrations of the custodian – sadism, sexual weakness, social hatred, etc.
- k) Lack of time for investigation.
- l) Inability to keep a person for longer duration in custody for interrogation than 24 hours are such factors which induce police to keep suspect in 'unofficial custody' which ultimately encourage the police to indulge in custodial violence.
- m) Long duration of work and deplorable conditions of work. A study carried out by National Productivity Council had shown that a policeman has to work sixteen hours a day and seven days a week.

#### **CUSTODIAL VIOLENCE AND INDIAN CONSTITUTION**

The legal framework in India both constitutional and statutory contains provisions relating to safeguards arrest, detention, custodial torture and other crimes in custody. The substantive law (Indian Penal Code, 1861) provides punishment of a person causing injury, torture or death on the body of a person in custody. The procedural law (Criminal Procedural Code, 1973 and Indian Evidence Act, 1872) contains several provisions safeguarding the legal rights of a person in custody. The Constitutional and the relevant statutory provisions on the subject have been supplemented by the significant judicial pronouncements. In addition, the Protection of Human Right Act, 1993 provides institutions of the National and State Human Rights Commissions as well as Human Rights Courts for better protection of human rights of a person in custody. India has ratified, acceded and signed the International Declarations, Covenants, Conventions and treaties such as Universal Declaration of Human Rights( UDHR), International Covenant on Civil and Political Rights ( ICCPR), International Covenant on Economic, Social and Cultural Right (ICESCR), International Convention on the Elimination of All forms of Racial Discrimination( ICERD), Convention on the Elimination of All Forms of Discrimination against Women( CEDAW), Convention on the Right of the Child (CRC), Convention against Torture and Other Cruel, inhuman or Degrading Treatment and Punishment (CAT), and the International Convention on the protection of



the Rights of All persons against Enforced Disappearance (CPAED). This apart, the UN Declaration on Basic Principles of Justice for Victims of Crime and abuse of Power is relevant.

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life is a fundamental right. Right to life does not mean just bare existence it means life full of dignity necessary for human existence in a society, personal liberty is taken care of by Article 22 which provides that the arrested person should be informed about the grounds of his arrest and should be produced within 24 hours of his arrest before magistrate. "Liberty is the most cherished possession of man."

The protection of life and liberty and protection from or against arrest of a citizen are contained in our constitution. The protection of life and liberty of a citizen includes the person so arrested, as the person so arrested is also a citizen of India and he is protected by Article 21 of the Indian constitution and, as much if at all his life and liberty is to be curtailed, it must be according to Article 21 of the Indian constitution which says that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. The expression personal liberty is not limited to bodily restraint or to confinement to prison only as has been illustrated by Hon'ble Supreme Court in *Kharak Singh V. State of U.P*

The Constitution in its part III deals with Fundamental Rights. The prohibitions imposed by Article 20, 21 and 22 of the Constitution are directly relevant to the criminal process. Article 20 (1) prohibits retrospective operation of penal legislation. Article 20(2) guards against double jeopardy for the same offence. Article 20(3) provides that no persons accused of any offence shall be compelled to be a witness against himself. Of course, constitution article protects against testimonial compulsion on the premise that such compulsion may act as a subtle form of coercion on the accused. Article 21 of the Constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law. The expression "Life and personal liberty" occurring in the Article has been interpreted to include Constitutional guarantee against torture, assault or injury against a person arrest and custody. The following are the illustrative decisions, in *Dastagir v. State of Madres*, it was held that Punishment which has an element of torture is unconstitutional.

In case of *Inderjeet v. State of Uttar Pradesh*, the Apex Court hold the view that prison restrictions amounting to torture, pressure or infliction and going beyond what the court authorities, are unconstitutional further it extended that an under-trial or convicted prisoner cannot be subjected to physical or mental restraint, which is not warranted by the punishment awarded by the Court, or which amount to human degradation (*Sheela Barse v. State of Maharashtra* Article 22(1) and 22(2) of the Constitution are also relevant for the present purpose because one of their objects is to ensure that certain checks exist in the law to prevent abuse of power of arrest and detention. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed as soon as may be, of the ground for such arrest, nor shall he be, of the ground s for such arrest, nor shall be de denied the right to consult and to be defended by legal practiner of the choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

The "Police" figure as Entry 2 in State List in the Seventh Schedule of the Constitution, thereby making State Government primarily responsible for maintaining public order. In variably, police, which is a part of the civil administration, is at the forefront in maintaining law and order under the framework of constitutional governance based on principles of "Sovereign Socialist Secular Democratic Republic to secure fundamental right of its citizens. In consonance with the idea of democratic policing, a Code of Conduct for the Police in India was adopted at the Conference of Inspectors General of Police in 1960 and circulated to all the State Governments.

**3.3 MEANING AND DEFINITION OF POLICE, CUSTODY, CUSTODIAL VIOLENCE AND HUMAN RIGHTS** Violence is a mechanism used to assert ones will over another in order to prove or feel a sense of power or superiority. It is generally perpetuated by those in power against the powerless. Violence therefore operates as a means to reinforce subordination. When a person is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by Judicial Orders, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. This word is of elastic semantics but its core meaning is that the law has taken control of the person.<sup>13</sup> Pre-conviction custody is known as under trial custody which is chiefly of two types- police and judicial. In police custody, the suspect is detained in the police lock-up by the investigating agency during the



period of investigation which can't be more than 24 hrs. Any detention beyond this period has to be with the permission of the magistrate and in total it can't exceed 15 days. In judicial custody there is incarceration of the suspect which is authorized by a magistrate pending investigation or trial in a jail which is distinct from a 12 S.P.Srivastava, Human Rights and the Administration of Criminal Justice in India (1993) p.73; V.V Devasia and Leelamma Devasia, Human Rights and Victimology (1998) pp. 6-7. 13 Niranjana Singh v. Prabhakar Rajaram Kharote, AIR 1980 SC 785. 53 police lock-up. The investigating agency can have access to such convict in the judicial custody only with the special orders of the court only. There is no statutory upper limit to under trial judicial custody save a provision which is commonly known as 'default bail'. The charge sheet has to be filed by the police and some other agencies who have the power of arrest and investigation like Narcotics Control Bureau, the Directorate of Enforcement and the Central Board of Excise and Customs (unless specifically some provision of CrPC has been ruled out) within 90 days in case the offence is punishable with death, imprisonment for life or imprisonment for a term of ten years or more and within 60 days in other cases. If the charge sheet is not submitted within such stipulated period then the detainee get a right to be released as a matter of right. But if the charge sheet is submitted within time then the under trial custody can continue for months and years, despite several judgments calling for speedy trial. Section 436A of CrPC provides for releasing the under trial on bail if he has been in the custody for more than half of the maximum period prescribed as punishment for which his trial is going on. But in postconviction custody, the whole term of sentence of imprisonment is to be served in the jail. There are other kinds of custody as well such as protective custody, deportation camps for foreigners whose presence has been declared to be illegal and military custody. The juveniles are housed by a special order in protection homes. For destitute women also, protection homes have been established. Under the Mental Health Act, persons may be committed to mental hospitals. Military custody is subject to the law of armed forces where only military personnel can be taken into custody and not the civilians by them. The paramilitary forces, when they exercise powers of arrest are required by law to hand over the arrested persons to the police. ([http://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11_chapter%203.pdf))

The expression 'Human Rights' has not been specifically defined in any declaration or covenant of the United Nations or in the Constitution of India. But these are generally understood as the rights which are inherent in our nature and without which we can't live as human beings. We get these rights by merely being born as human beings. Recognition of these natural rights of human beings is as ancient as the human civilization. The Human Rights trace back to the Magna Carta (1215-AD), the Petition of Rights (1627AD) and the Bill of Rights (1688) in the United Kingdom. The Declaration of Rights of Man (1789) by the French National Assembly influenced the framing of the Constitution of the United States of America and in the 19th century these rights became the basic principles of the constitutional law of modern civilized States.<sup>22</sup> The Universal Declaration of Human Rights was unanimously adopted and proclaimed by the United Nations General Assembly on December 10, 1948. For giving legal form to the provisions, the Universal, Social and Cultural Rights came into force on January 3, 1976 and the International Covenant on Civil and Political Rights came into force in March 23, 1976. India was one of the signatories of the Universal Declaration of Human Rights, and acceded to the two International Covenants by depositing the Instrument of Accession on April 10, 1979. The Vienna Declaration and Program of action adopted on June 25, 1993 by the World Conference on human rights declared that "Human Rights and Fundamental Freedoms are the birth right of all human beings". The human rights are now recognized as the limits to the exercise of power by the State over individuals.<sup>23</sup> The origin of police can be traced to the time in the early human history when small nomadic groups sought the help of the strong and dependable man for watch and ward purposes and to guard against the attack of animals and the selfish human beings. As these groups organized themselves into tribes and 22 P.K.Mishra, Custodial Death: A Crude Action of Human Rights Violation Indian Human Rights Law Review vol.1.no.1 June 2010. 23 S.K.Awasthi and R.A.Kataria, Law Relating to Protection of Human Rights (2001) p.832. 59 settled down in small communities, they began to evolve rules and regulations for the protection of persons and property. Simultaneously, the agency for the enforcement of these tribal laws also originated. Thus, the earliest law enforcement agency was, perhaps, a kind of military police. Policemen have existed since time immemorial and are found almost everywhere in the world. It is unfortunate that the exact details of police organisation in ancient India are not available and so different materials scattered in various scriptures and Shastras are to be stitched together to have a coherent picture of the police system.<sup>24</sup>([http://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/75380/11/11_chapter%203.pdf))

Custodial violence and abuse of power of law by the enforcing machineries like police is not only peculiar but it is widespread in this democratic country. It has been the concern of international community as the problem is universal and challenge is almost global. The Article 5 of the Universal declaration of Human Rights, 1948



clearly states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Further, Article 7 of the International Covenant On Civil and Political Rights, 1966 also states in a similar way - "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" Article 9(1) of the said covenant also says that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

India has already ratified the aforesaid declaration and covenant. Despite such ratification, the custodial crimes continues unabated. In all custodial crimes what is of real importance is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police lock up.

#### **ARTICLE 21 OF THE INDIAN CONSTITUTION PROVIDES**

"No person shall be deprived of his life or personal liberty except according to procedure established by law." Personal liberty, thus is a cherished right under the Constitution. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State and its law enforcing machineries. Article 22 guarantees protection against arrest and detention and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

Article 22(2) states that person arrested and detained in police custody shall be produced before the nearest Magistrate within a period of 24 hrs. of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the Magistrate. Section 50 of the Criminal Procedure Code, 1973 enjoins every police officer arresting any person without warrant to communicate to him the full particulars of the offence for which he is arrested and the grounds for such arrest. The police officer is further enjoined to inform the person arrested that he is entitled to be released on bail and he may arrange for sureties in the event of his arrest for a non-bailable offence.

In spite of the constitutional and other provisions for safeguarding the life and liberty of the public growing incidence of torture and deaths in police custody has been a disturbing factor. Incidents of violation of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts technique of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. There are various newspaper reports of torture, assault, rape and death in the police custody or other law enforcing machineries. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of rule of law and the administration of criminal justice system.

Police is, no doubt, under a legal duty and has legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that law does not permit use of third degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. The interrogation and investigation into a crime should be in true sense purposeful to make the investigation effective. By torturing a person and using third degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No democratic society can permit it.

In the case of Nilabati Behra V. State of Orissa reported in (1993) 2 SCC 746, the Hon'ble Supreme Court of India has held that: "It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in custody. The precious rights guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials or other prisoners in custody except according to procedure established by law... .. The duty of care on the part of the State is strict and admits no exceptions. The wrongdoer is accountable and State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law."

In order to prevent and check the misuse of power by the police and other investigating agencies, the Supreme Court of India has laid down 11 (eleven) requirements and directions to be followed in all cases of arrest or detention in the landmark case of D.K. Basu - Vs - State of West Bengal reported in (1997) 1 SCC 416. The following points are also included "The police personnel carrying out the arrest and handling the interrogation



of the arrestee should bear accurate, visible and clear identification and name tag with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

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 the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest .....

The arrestee should be subjected to medical examination by a trained doctor every 48 hrs. during his detention in custody by a doctor on the panel of approved doctors appointed by 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.

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

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

The Hon'ble Apex Court further warned that failure to comply with the aforesaid 11 (eleven) requirements shall apart from rendering the official concerned liable for departmental action also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country having territorial jurisdiction over the matter.

In the said case of D.K. Basu, the Hon'ble Supreme Court of India further held that custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. If the functionaries of the government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and everyman would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen.

In Rudul Shah - Vs - State of Bihar reported in (1983) 4 SCC 141, the Hon'ble Supreme Court of India has held that the supreme Court under Article 32 of the Constitution of India can grant compensation for the deprivation of personal liberty though ordinary process of Court may be available to enforce the right and money claim could be granted by the Court. Accordingly compensation was awarded. This view was reiterated in Nilabeti Behera Vs. State of Orissa reported in (1993) 2 SCC 746 and the Supreme Court awarded monetary compensation for custodial death lifting the State immunity from the purview of public law.

In D.K. Basu case also, the Supreme Court held that grant of compensation in proceedings under Article 21, in an exercise of the Courts under the public law jurisdiction for penalizing the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen. It is therefore settled law that in public law the claim for compensation is a remedy available under Article 32 or 226 of the Constitution of India for the enforcement of the fundamental rights. The defence of sovereign immunity is in applicable and alien to the concept of guarantee of fundamental rights.

Attention is required to be given to properly develop work culture, training and orientation of the police force consistent with basic human values. Training methodology of the police needs restructuring. The force needs to be infused with basic human values and made sensitive to the constitutional ethos. Scientific methods of investigation also requires to be introduced. To deal with such a situation, a balanced approach is needed to meet the ends of justice. The endeavour should be to achieve balanced level of functioning where police respect human rights, adhere to law and take confidence building measures and at the same time, deal with organised crimes, terrorism, white collared crime, deteriorating law and order situation etc.( [http://www.e-pao.net/epSubPageExtractor.asp?src=education.Human\\_Rights\\_Legal.Custodial\\_torture\\_A\\_naked\\_violation\\_of\\_human\\_rights](http://www.e-pao.net/epSubPageExtractor.asp?src=education.Human_Rights_Legal.Custodial_torture_A_naked_violation_of_human_rights))

The Supreme Court has viewed seriously ineffective implementation of series of directions to curb custodial deaths and sought explanation from the Centre and states after being informed that nearly 12,000 persons died — either in jail or in police stations — in last five years.

A bench of Justices S S Nijjar and F M I Kalifulla was pained when amicus curiae A M Singhvi moved an application seeking implementation of 15 more guidelines to clamp down on custodial excesses, which has



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resulted in the death of 11,820 and 3,532 reported cases of custodial torture between 2007 and 2012.(  
<http://timesofindia.indiatimes.com/india/11820-custodial-deaths-in-five-years/articleshow/26283098.cms>)

**JUDICIARY ON CUSTODIAL DEATH AND VIOLENCE**

In *Jogindar Kumar v. State of U.P.* (1994) 4 SCC 260, the Supreme Court has laid down guidelines governing arrest of a person during investigation. This has been done with a view to strike a balance between the needs of police on the one hand and the protection of human rights of citizens from oppression and injustice at the hands of law enforcing agencies.

In a landmark judgement of *Nilabati Behera v.State od Orissa*, (1993) 2 SCC 746, the Supreme Court awarded compensation Rs. 1,50,000/- to the mother of the deceased who died in the police custody due to beating.

In another landmark judgement in *D.K. Basu v. State of W.B*, AIR1997 SC 610, the SC has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention.

Justice Kuldip Singh and Justice Dr. A.S.Anand observed that custodial death is perhaps the worst crime in a civilised society governed by the rule of law. The court held that the precious rights guaranteed under Article 21 of the Constitution could not be denied to convicts, under trials and other prisoners in the custody, except according to the procedure established by law.

In *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 1203, the SC held that the killing of two persons in fake encounter by the police was clear violation of the right to life guaranteed under Article 21 of the Constitution.

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