Chapter-1

Introduction

The discourse of development has been undergone a paradigmatic shift over the few decades (CDHR 2003; TISS 2007). The human development has become an exiting debate of developmental thinking in contemporary period. As the first Human Development Report (1990) has argued, Human beings are the real wealth of a nation, and the basic objective of development is to create enabling environment for enhancing their achievements, freedoms, and capabilities including self respect and human rights. In this context issue of governance has moved at the forefront of the agenda for sustained human development in recent years, the. Experience from many countries shows that while good governance can help secure human well being and sustained development, it is equally important to recognize that poor governance could well erode the individual capabilities, as well as institutional and community capacities to meet even the basic needs of sustenance for large segments of the population (National Human Development Report 2001). It has now been fully realized that poverty is not merely the result of bad economy, it is also due to bad governance. Being voiceless and powerless that makes it very difficult for the poor and disadvantaged people to access justice and easy prey for the state and its agencies like the police and the elite class to deny them the access (CHRI 2003).

1.1 Contextualizing Custodial Violence

Custodial violence and abuse of police power have emerged a major issue of human rights concern and one of the root obstacles to democracy and development of human well being in contemporary societies. Torture caused custodial violence has devastating effects on physical and mental health as well as social functioning of the individuals, their children, families, communities and society at large. The victims remain in a state of perpetual fear and horror whenever they remember their custodial agony, hatred, trauma and probably never able to lead a normal life in many parts of the world (Cohen and

The practice of custodial violence in the developing countries like India is, however, more difficult and complex. A large number of cases of police brutality take place not because of individual aberration, but because of systematic compulsions. The practice is more widespread and gone unchecked since British days if there was no tacit support of senior police officials, bureaucrats, politicians and judiciary. The fact is that the practice also enjoys the support of a large section of the public in the mistaken belief that it is necessary for effective maintenance of law and order (Marwah 2003).

Torture, in order to extract confession was so endemic in India that the British colonial rulers, when enacting criminal laws for the country, decided to make all confessions to police officers inadmissible as evidence in court of law. After Independence, the Constitutional and statutory provisions safeguarding life and liberty of an individual in custody including rights against self-incriminate, incidences of custodial crimes have become a disturbing factor in society (Bayley 1969; Baxi 1983; Desai 1986; Ghosh 1983 1993; BPR&D 1993; Bose 1996).

In recent years, custodial crimes have drawn attention of Public, Media, Legislature, Judiciary and even Human Rights Commission. Nevertheless, judicial activisms, widespread media coverage, initiatives taken by National Human Rights Commission as well as Civil Society Intervention have shown their concern for combating torture and upholding human dignity. However, custodial crimes have not only increased in manifold dimensions but also became a routine police practice of interrogation these days (Bajpai 1995; Sen 1998; Tiwari 1999; Ahuja 2000; Srivastava 2001; Singh 2001).

Studies indicate that generally, the victims of custodial crimes are poor, women, children and disadvantaged people those who belong to the weaker sections of society. The poor & socially excluded groups & people with little or no political or financial power are unable to protect their interests. Affluent members are not generally subjected to torture as the police afraid of their resourcefulness. The members of the weaker or poorer sections of society are arrested informally and kept in police custody for days together
without any entry of such arrests in the police records. During the informal detention they are subjected to torture, which sometimes results in death. In event of death in custody, the body of the deceased is disposed off stealthily or thrown to a public place making out a case of suicide or accident. Records are manipulated to shield the police personnel. The relatives or friends of the victims are unable to seek protection of law on account of their poverty, ignorance and illiteracy. Even if voluntary organizations take up their cases or file public interest litigations, no effective or speedy remedy is available to them, which results in the erring officers go scot-free (National Police Commission 1979; Amnesty International 1992; Law Commission of India 1994).

The Supreme Court and High Courts in their several landmark judgments upheld that police personnel do indulge in custodial crimes. Through creative interpretation, the higher judiciary has evolved mechanisms for protection of the rights of the victims of torture and their entitlements for compensation. In leading cases of Nilabati Behera V State of Orrisa (1993 2 SCC 746) and D.K. Basu vs. State of West Bengal (AIR 1997 SCC 610), the Apex court held that the claim of sovereign immunity arising out the State discharging sovereign functions is held to be no defense at all against the acts of violation of the constitutionally guaranteed Fundamental Human rights. The Court further held that “there is a great responsibility on the police authority of ensures that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact or his confinement and therefore his interest in the limited liberty left to him is rather precious .The duty of case on the part of the State is strict and admits of no exceptions. The wrongdoer is an accountable and the State is responsible if the person in custody of the police is deprived of his life except according to procedure established by law. In this landmark case, the court has judiciously evolved a right to compensation in context of established unconstitutional deprivation of personal liberty. Time and again, the higher judiciary has taken serious view on the issue of custodial crimes and issued guidelines as preventive measures and has also evolved custodial jurisprudence to control the menace of custodial crimes in police custody (Pandey, 2004, Sripati, 1999).
The National Human Rights Commission, since its establishment, in 1993, has given new dimensions in exposing the custodial crimes in police custody. While dealing with custodial violence cases, the NHRC has adopted methodology of mandatory reporting of custodial abuse, investigatory or fact finding such abuse, compensatory to the victims/next of kin against State impunity and individual accountability of the responsible police personnel as well as reformatory of custodial institutions in particular police custody. On several occasions, the Commission criticized law enforcement personnel, medical professionals, public officials and other persons who may be involved in custody, interrogation of any individual subjected to any form of arrest, detention or imprisonment and dehumanizing method of torture and treatment of victims of torture and recommended measures to inculcate a culture of human rights in police custody. However, the phenomenon of custodial crimes is still continuous in police custody. According to the National Human Rights Commission (NHRC), the majority of the complaints, received by the NHRC pertain to Uttar Pradesh State over the years. In its latest report (2005-06) the Commission commented that trend is continues despite the fact that the State of Uttar Pradesh has its own state human rights commission.

Human rights NGOs in India have played significant role through public interest litigation and other initiatives in promotion and protection of human rights including securing custodial justice in police custody. Among them, People’s Union for Civil Liberty (PUCL), People’s Union for Democratic Rights (PUDR), South Asian Human Rights Documentation Centre (SAHRDC), Asian Centre for Human Rights (ACHR), Penal Reform and Justice Administration (PRAJA), Commonwealth Human Rights Initiatives (CHRI), People’s Watch, Amnesty International and Human Rights Watch are worth mentioning. These organizations have done commendable work through fact findings, lobbying, advocacy, research and documentation of custodial crimes and highlighted torture cases before the Courts & Human Rights Commissions with great administrative hurdles (Desai 1986).
In a significant development during last few years, some voluntary organizations have come forward in the field of rehabilitation of victims of custodial violence and torture in different states. The voluntary organizations includes Centre for Care of Torture Victims, Kolkatta (West Bengal), Centre for Organization, Research and Education for Community Programme for Young Survivors for Torture, Manipur (North East), Subodhaya Centre for Rehabilitation of Victims of Torture and Violence, Delhi, Tibetan Torture Survivors Programme, Dhamshala, Himachal Pradesh Torture Prevention Centre India Trust, Cochin (Kerala), Vaan Muhil, Vijaywada( Andhra Pradesh) and Vasavya Mahila Manadali Rehabilitation Centre for Torture, Trichur (Tamilnadu) are worth mentioning. These centers are engaged in analyzing multiple problems of victims of custodial torture and also provide support services to such victims includes legal, economical, social, psychological, psychiatric, physiotherapy and medical to the victims and next-of-kin.

In spite of various efforts initiated by government, non-government organizations, and media to combat custodial crimes including torture in police custody. However, torture is endemic in India and this is a fact acknowledged by the authorities and widely documented. Police forces are poorly trained on investigation methods and on the absolute prohibition of torture and cruel, inhuman or degrading treatment. Most cases of torture by state officials occur in police custody, and it is widely acknowledged by governmental and non-governmental studies that the police operate in a system facilitating the use of torture and ill-treatment. Torture is systematically used in the criminal justice system as a method of investigation: the increasingly dysfunctional criminal justice system and torture in custody constitute a vicious circle of deficient interrogation, falsified investigation results and distrust of the criminal justice system. It appears that there exists a certain perception in India that torture is acceptable under extreme circumstances, and for “hardened criminals” and “terrorists”. The overload within the criminal justice system also contributes to public tolerance towards violence as a means of justice. The consequence of this is a lack of investigation into allegations of torture, let alone of “mere beatings”, and impunity for the perpetrators. Corruption within the police equally provides a ground for the practice of extortion and threats. It is reported that members of the medical profession refuse to examine torture victims or
document injuries, often because of fear and threats. As a result, the number of custodial deaths is alarmingly high. The Supreme Court and High Courts of India as well as the National Human Rights Commission have handed down many recommendations to achieve a better prevention against torture and to provide for redress measures for victims, but it has not lead to an eradication of the phenomena of custodial crimes including torture in police custody (International Commission of Jurists 2003).

1.2 Definitions of Custodial Crime

A **custodial crime** means “To take a person in custody is to limit his freedom. Taking advantage of such a situation, the custodian may attempt to commit crime on the person under custody. Individuals come under the police custody for various reasons like arrest, police remand or the police custody per se is unauthorized. Most prevalent crimes in police custody are: assault of various types, rape and murder (Crime in India 1997).

According to **Custodial Crimes (Prevention, Protection and Compensation), Bill, 2006** ‘Custodial Crime’ means “an offence caused against any arrested person or a person in custody when that person was in the custody of a police office or a public servant who has power under any law to arrest and detain a person in custody, by the police officer or the public servant concerned having the custody of that person during that period.”

The Supreme Court of India in the landmark judgment of **SAHELI-A Women Resource Centre v. Police Commissioner of Delhi (A.I.R. 1990 SC 513)** interpreted the “ Custodial Crimes” is a crime occurring during the period when some limitation is placed upon the liberty of the person either directly or indirectly, by the police. It precisely extend the meaning of custodial commission of crimes that it is immaterial whether or not the injury, torture or assault occurs within premises of police station or police post (chowki). What really matters is the control of police over the victims.

According to **United Nations Special Rapporteur on Torture (2008)**, “Custodial Violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching private parts of a woman, being stripped naked, invasive body searches, insults and humiliations of a sexual nature etc.
1.3 Nature and Extent of Custodial Crimes in India

**Table No. 1.1 Showing Cases of Custodial Crimes in Police Custody**

<table>
<thead>
<tr>
<th>Year</th>
<th>Deaths in Police Custody</th>
<th>Rapes in Police Custody</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>31</td>
<td>6</td>
</tr>
<tr>
<td>1996</td>
<td>49</td>
<td>6</td>
</tr>
<tr>
<td>1997*</td>
<td>40</td>
<td>6</td>
</tr>
<tr>
<td>1998</td>
<td>46</td>
<td>4</td>
</tr>
<tr>
<td>1999</td>
<td>65</td>
<td>4</td>
</tr>
<tr>
<td>2000</td>
<td>78</td>
<td>2</td>
</tr>
<tr>
<td>2001</td>
<td>90</td>
<td>0</td>
</tr>
<tr>
<td>2002</td>
<td>84</td>
<td>3</td>
</tr>
<tr>
<td>2003</td>
<td>94</td>
<td>1</td>
</tr>
<tr>
<td>2004</td>
<td>86</td>
<td>2</td>
</tr>
<tr>
<td>2005</td>
<td>128</td>
<td>7</td>
</tr>
<tr>
<td>2006</td>
<td>89</td>
<td>2</td>
</tr>
<tr>
<td>2007</td>
<td>118</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>978</td>
<td>44</td>
</tr>
</tbody>
</table>

Source: Crime in India 1995-2007

Table 1.1 shows the upward trend of custodial deaths in the police custody over period of time. In contrast, the cases of rape in police custody have been increased since 1995 till 2007 except in 2005, which registered highest number of rape cases over a decade.

1.3.1 Definitional and Conceptual Issue

Besides, these two categories of custodial crimes such as deaths and rapes in police custody which are recorded by National Crime Record Bureau (NCRB). But what about third category of custodial crimes, various types of assaults which is nowhere defined or recorded as such data in crime in India. The questions emerge “what is assault”? What are the various types of custodial crimes? “What are other forms of crimes in custody?” and “How does the custodial crime change over period of time?” However, an attempt has been made to gather information on details of cases where human rights were violated due to Police extremist reported by National Human Rights Commission (NHRC) such as custodial deaths, rapes, disappearance, ‘illegal detentions’, fake implications, ‘other police excesses including fake encounters’ and Torture.

*Since 1995 to 2000, 309 cases of custodial deaths reported, 419 police personnel arrested and out of 21 police personnel convicted. In 2001/20 cases reported, 6 policemen charge sheeted and 1 person convicted. In 2002, 84 custodial deaths reported 34 cases registered, 32 policemen charge sheeted, none convicted. In 2004, 86 custodial deaths reported, 15 policemen charge sheeted, 4 were convicted. 2 cases of custodial rape were reported in police custody. In one case final report has been submitted and one case was under investigation. In 2005, 128 custodial deaths reported, 24 cases registered, one man charge sheeted and on police personnel convicted. In 2007, 118 cases of deaths in police custody reported, 33 cases registered against police personnel, 7 policemen charge sheeted and no one convicted.
Table No. 1.2 Violations of Human Rights in Police Custody recorded by NHRC

<table>
<thead>
<tr>
<th>Year</th>
<th>Custodial Deaths</th>
<th>Custodial Rapes</th>
<th>Disappearances</th>
<th>Illegal detention/Arrest</th>
<th>False implication</th>
<th>Other Police Excesses*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1993-94</td>
<td>34</td>
<td>01</td>
<td>00</td>
<td>00</td>
<td>00</td>
<td>61</td>
</tr>
<tr>
<td>1994-95</td>
<td>111</td>
<td>03</td>
<td>55</td>
<td>114</td>
<td>21</td>
<td>497</td>
</tr>
<tr>
<td>1995-96</td>
<td>136</td>
<td>00</td>
<td>39</td>
<td>112</td>
<td>64</td>
<td>1115</td>
</tr>
<tr>
<td>1996-97</td>
<td>188</td>
<td>03</td>
<td>175</td>
<td>282</td>
<td>237</td>
<td>1643**</td>
</tr>
<tr>
<td>1997-98</td>
<td>193</td>
<td>01</td>
<td>12</td>
<td>330</td>
<td>237</td>
<td>1413</td>
</tr>
<tr>
<td>1998-99</td>
<td>180</td>
<td>00</td>
<td>27</td>
<td>436</td>
<td>634</td>
<td>2252</td>
</tr>
<tr>
<td>1999-00</td>
<td>177</td>
<td>00</td>
<td>54</td>
<td>1,157</td>
<td>1647</td>
<td>5783</td>
</tr>
<tr>
<td>2000-01</td>
<td>127</td>
<td>01</td>
<td>54</td>
<td>1,257</td>
<td>821</td>
<td>3,947</td>
</tr>
<tr>
<td>2001-02</td>
<td>165</td>
<td>00</td>
<td>80</td>
<td>1,975</td>
<td>1,768</td>
<td>4,638</td>
</tr>
<tr>
<td>2002-03</td>
<td>183</td>
<td>02</td>
<td>263</td>
<td>3595</td>
<td>2783</td>
<td>9622***</td>
</tr>
<tr>
<td>2003-04</td>
<td>162</td>
<td>00</td>
<td>05</td>
<td>660</td>
<td>420</td>
<td>2344</td>
</tr>
<tr>
<td>2004-05</td>
<td>136</td>
<td>04</td>
<td>24</td>
<td>9871</td>
<td>1213</td>
<td>6488</td>
</tr>
<tr>
<td>2005-06</td>
<td>139</td>
<td>05</td>
<td>19</td>
<td>909</td>
<td>606</td>
<td>3615</td>
</tr>
<tr>
<td>Total</td>
<td>1931</td>
<td>20</td>
<td>807</td>
<td>20 598</td>
<td>10451</td>
<td>43318</td>
</tr>
</tbody>
</table>


Table 1.2 demonstrates increasing trend figures of custodial crimes over the years despite stringent instructions and guidelines issued by National Human Rights Commission to police authorities. This shows that police establishment is not serious to take cognizance on the guidelines issued by the NHRC for prevention of custodial crimes.

1.3.2 Concept of Police Custody:

Custodial crimes proceed with arrest and detention in police custody. Custody in its strict sense means care, safety and guardianship. The term police custody denotes surveillance or restriction on the movement of the person arrested or detained fully or partially (Section-27 of the Indian Evidence Act, 1872). The police custody commences a person when he/she is arrested. The arrest may be legal or illegal; it may be formal or informal; it may be by words or action. Every arrest amounts to custody but not vice versa. Arrest and custody are not in all circumstances. Arrest is a formal mode of taking a person into custody, but a person may be in the custody in other ways also. Whatever be the origin or category of custody, it has an important consequence that deprives the liberty of a person being arrested or detained in police custody. A detainee's movement, action and even thinking comes exclusive control of custodian. Thus, the personality of a detainee
becomes subordinate to that person under s/he is placed. This situation of mastery and domination over body and mind generate various types of abuses in custody of police so called custodial commission of crimes in police custody (Law Commission of India 1985; 1994).

1.3.3 Understanding Police Use of Force
The phenomena of custodial crimes also known by various names in different countries such as police brutality, police violence, police criminality, police misconduct and police deadly use of force.

The term “Police Brutality” is phrase from common speech; thus its meaning is not defined. In general, it connotes the use of excessive force by the police against members of the public. It is accepted that many uses of force by the police cannot be labelled “Police brutality or “excessive” because the use of forces is sometimes necessary in police work. The police are the officials in modern society who commonly are called upon when the state has to use it ultimate power of coercion against its own citizens, either for reasons rooted in the enforcement of lawful orders or simply to keep order. Thus, the power to use force is an essential part of police functioning. Fyfe and Skolniak(1993) have made an important distinction between the “unnecessary” use of force, which may be excessive because of poor training negligence or the misperception of a situation and “police brutality” which define as “conscious and venal act” the term “brutality” does not seen to imply a deliberately violent act. Nevertheless in common place, the distinction is not usually made between force that is unnecessary under the circumstances but it is not deliberately so, and the deliberate use of excessive force by the police that is viewed as excessive is commonly called “Police Brutality”. United Nations has established standards for the use for force by Law Enforcement officials, (which includes police). According to the UN Code of Conduct for Law Enforcement officials (1991), they may use force only when strictly necessary and to extent required for the performance of their duty.
Police Brutality may divided between brutality that occurs as part of the order keeping and crime prevention function of police, on the one hand, or brutality that occurs during the investigative function on the other hand. The former usually occurs in the street, and takes the form of beating or in the extreme, a shooting, and the later usually occurs inside a police station or police custody as version of Torture.

1.3.4 What is Torture?

According to the Article 1 of the United Nations Convention Against Torture and Other Cruel Inhuman or Degrading Treatment in (CAT), 1984, torture is defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In India, neither Constitution nor statutory law contains an express definition of torture. However, different provisions in law provide police power for use of force only in three circumstances; Firstly, to apprehend a person who resists an endeavour to arrest him or attempts to evade arrest under Section – 46 of Code of Criminal Procedure, 1973; secondly, for the dispersal of an unlawful assembly under Section-129 of Code of Criminal Procedure, 1973 and thirdly, in the exercise of the right of private defence under Section-100 and 101of the Indian Penal Code, 1860. The legal provisions in laws and procedures in India, allow police in respect of police use of force in certain situations as discussed above. However, police generally believed that use of force is necessary to detection and prevention of crime so called third degree or torture and considered as an effective instrument for seeking confession (Bawa 1999).
1.3.3 Magnitude

Reliable information on custodial crimes is rare and, when it exists often incomplete because the crime in custody is most serious. The systems of accountability are so inadequate that the police have virtual impunity, so that the frequency of use the torture in custody can only inferred. Even where the problem is not so serious, furthermore, almost all charges of police criminality are contested, because it is usually possible for the police to offer a plausible justification for their action (Chevigny 1999).

Amnesty International in its reports has commented that a solid country by country statistics about the crime of torture is not available. It is impossible to estimate how many people were tortured in the last century, the last decade or the last year. However, since beginning of 1997 until mid-2000, Amnesty International received reports of torture or ill-treatment committed by state officials in more than 150 countries. In more than 70 countries, such torture and ill-treatment appeared to be widespread or persistent. In more than 80 countries, people reportedly died as a result of torture. Moreover, the common methods of torture and ill-treatment used by state agents or police in almost all the countries across the globe include beating( more than one hundred and fifty countries), electric shocks( more then forty countries), rape and sexual abuse in custody( more than fifty countries), suspension of the body( more than forty countries), beating on the soles of the feet( more than thirty countries, suffocation( more than thirty countries), mock execution or threat to death( more than fifty countries). Other methods included submersion in water, stubbing out of cigarettes, sleep deprivation and sensory deprivation (Amnesty International 2001).

According to UN Special Rapporteur on Torture (United Nations 2000) various methods of torture are used in police custody. Among them, public flogging, public lashing being forced to swallow detergent; sodomy; burning with blow torch; electric shocks; suspension by the wrists; forcible extraction of teeth; beating during public demonstrations; extended detention in solitary confinement; stabbing ; death in custody as a result of ill-treatment; torture during pre-trial detention for the purposes of obtaining confessions; overcrowding in pre-trial detention centers, malnutrition, contagious diseases; asphyxiation; beatings on the soles of the feet; insertion of metal nails under
toenails; verbal abuse including sexual insults; shutting the fingers in a door; being tied naked to a radiator; burning with cigarettes beatings with toucheons, boards, metal pipes, hoses; threats of assault, including sexual abuse and rape; continuous blindfolding; threats of having police dogs released on persons arrested or detained; protracted hanging by arms; denial of access to toilets; kicking in the head; denial of food; protected forced standing; threats against family members; forced feeding; prisoner-on-prisoner violence; being stripped naked and forced to crawl through the effluent from a sewage outlet; firing of shots into cells; being forced to perform oral sex; denial of medical treatment; sleep deprivation; scalding with boiling water; threats of amputation; use of tear gas against prisoners; holding the head under water, prolonged incommunicado detention; beatings resulting in broken limbs and bones; denial of needed medical attention; beating and rape; negative religion counseling; prolonged detention in psychiatric institutions; life-threatening prison conditions; being hung upside down; are common methods for use of force by police in the custody.

The Asian Human Rights Commission (2006) conducted a study in the eleven countries like Bangladesh, Burma, Cambodia, India, Indonesia, Maldives, Nepal, Pakistan, Philippines, Sri Lanka and Thailand and found almost same pattern of torture inflicted by police in custody in Asian region includes extrajudicial killings, torture and other forms of violence and disappearances. Instead, states claim they are carrying out their obligations as a state by engaging in even crime against humanity.

In India, no reliable or authentic statistics is available regarding the custodial crimes in police custody. Most of the incidents of torture are not recorded. Incidents of torture and injury in urban areas are brought to public notice by the media, while large number of such incidents occurring in rural areas of our vast country, remain unnoticed. In this state of affairs, it is difficult to pinpoint the exact number of incidents of torture and death in custody (Law Commission of India 1994).

According to the Amnesty International’s Report for the year 1993, 415 persons died in custody throughout India during the period 1985 to 1993. According to National Crime Record Bureau 289 rapes and 274 deaths in police custody were reported from all over the country during 1990 to 1993. A report published in a leading newspaper indicated
that 265 incidents of custodial deaths occurred during 1990-1993. In a significant
development in 1997, the National Crime Records Bureau (NCRB), Ministry of Home
Affairs, Government of India has added a new chapter on ‘Custodial Crimes’ in its
annual publication ‘Crime in India’. Similarly, the National Human Rights Commissions
since its inception in 1993 is also compiling data relating to human rights violations in
police custody. However, data provided by both agencies do not match. For example, the
National Crime Records Bureau (NCRB) has reported 978 custodial deaths and 44
custodial rape cases during 1995 to 2007. While data from National Human Rights
Commission (NHRC) shows that 1931 deaths and 20 rapes were reported in police

1.3.4 Custodial Crimes in Uttar Pradesh State

Historical speaking, the Uttar Pradesh Police Commission (1971) investigated the use
of third degree by police in custody. One of the Divisional Commissioners in his
statement before the Commission said, “Third degree methods of the police have good
utility and they are the only effective means of controlling bad characters”. Another
Divisional Commissioner deposed before the Commission said that “Dishonest steps of
investigation in recovery, third degree methods; and creation of false evidences are all
due to social requirements of India, and are minor evils when compared to the larger evil
of general national dishonesty. There is ample justification for the police to use third
degree methods with criminals as the latter were using it against society.”

In this regards, a famous Baghpat incident in Meerut District of Uttar Pradesh, commonly
known as “Maya Tyagi” case which occurred on June 18, 1980, is noteworthy to
mention. The case shows that the woman was going to attend a marriage party along with
her husband and some close friend when disaster struck them all on a sudden. The car in
which they were traveling on way to Sakalpatti village where the marriage was taking
place developed trouble at Baghpat. They stopped at a small tea stall. The driver of the
car went to repair the punctured tyre. Meanwhile, Maya Tyagi’s husband and friends got
out of the car. It was at that point of time a Sub-Inspector of Police with a head constable
appeared on the spot in plain clothes. The time was about 13.30 p.m. Finding Maya alone
in the car, the head constable made obscene overtures towards her. When she protested
against the policeman’s behavior, her husband and friends came to her rescue. But the policeman would not listen to them to leave them alone. More policemen arrived from the police station to the spot in order to teach a lesson to them. The sub-inspector who held a rifle in his hand, fired on Iswar Tyagi, the husband of Maya and two others, killing all of them on the spot. But the incident did not end there. Maya was dragged out of the care and attacked obscenely. She was forcibly stripped of her clothes and made to walk nude the road in order to take her to the police station. In shame she sat down on the road on her toes. But the policemen present there started dragging her forcibly towards the police station. When she refused to move, a bamboo was inserted into her private parts. She was ultimately dragged to the police station and put in the lock up. When the citizens of the locality strongly protested the police made out a story that some dacoits had been killed in an encounter with the police. The erring policeman also circulated another story that Maya was a member of the dacoit gang. Nobody, however, believed the police version. Compelled by the waves of popular protests sponsored by former Prime Minister of India, Mr. Chowdry Charan Singh and his wife Gayatri Devi, the Government of Uttar Pradesh appointed P.N. Rai Commission (1980) to hold an inquiry. The Commission submitted its report in December 1980 holding the policemen guilty. It discarded the encounter story put up by the police as false. It was most surprising that instead of taking action against the erring policemen, the Government at that time transferred key men of the C.I.D. who was investigating into the incident. It was unfortunate that the erring policemen continued in their posts because, it was alleged, they had helped Congress (I) Government to return to power in 1980 and had support of Sanjay Gandhi (Ghosh 1993).

The another example was the killing of about forty Muslim youth by the personnel of Uttar Pradesh Provincial Armed Constabulary (PAC) in Meerut District, on 22-23 May 1987. The dead bodies were thrown in near Ganga Canal in Muradnagar and throwing their dead bodies in the canal (Ansari 2004).

The most glaring instance of Police excesses took place on October 2, 1994 in district Muzaffarnagar against the peaceful demonstrations of Uttarakhand movement, as many as 24 persons were reportedly killed in cold blood by the police, seven women were raped and 17 others were sexually molested. In that ghastly incident, the Allahabad
High Court rejected the doctrine of Sovereign Impunity, advancing the cause of human rights declared compensation in a case of human rights violation. The Court ordered the state to pay Rs. 10 lakh as compensation for each case of death and rape, Rs. 5 lakh for each case of injury or permanent disability, and Rs. 50,000 for each case of illegal detention (Roy 2004).

**Table No. 1.3 Complaints of Human Rights Violations from Uttar Pradesh**

<table>
<thead>
<tr>
<th>Year</th>
<th>All India</th>
<th>State of Uttar Pradesh</th>
</tr>
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<tbody>
<tr>
<td>1993-04</td>
<td>496</td>
<td>102</td>
</tr>
<tr>
<td>1994-05</td>
<td>5710</td>
<td>773</td>
</tr>
<tr>
<td>1995-06</td>
<td>11153</td>
<td>2769</td>
</tr>
<tr>
<td>1996-07</td>
<td>16823</td>
<td>7366</td>
</tr>
<tr>
<td>1997-07</td>
<td>20,514</td>
<td>17638</td>
</tr>
<tr>
<td>1998-08</td>
<td>40,724</td>
<td>22043</td>
</tr>
<tr>
<td>1999-2000</td>
<td>56,634</td>
<td>28,598</td>
</tr>
<tr>
<td>2000-01</td>
<td>71,555</td>
<td>40,444</td>
</tr>
<tr>
<td>2001-02</td>
<td>69,083</td>
<td>39,588</td>
</tr>
<tr>
<td>2002-03</td>
<td>68,799</td>
<td>40,612</td>
</tr>
<tr>
<td>2003-04</td>
<td>71,427</td>
<td>40,396</td>
</tr>
<tr>
<td>2004-05</td>
<td>74,401</td>
<td>44,351</td>
</tr>
<tr>
<td>2005-06</td>
<td>74,444</td>
<td>44,186</td>
</tr>
</tbody>
</table>


Table 1.3 shows that since its establishment, the National Human Rights Commission has been receiving nearly 50 percent of the total complaints from the State of Uttar Pradesh. The Commission in its annual reports has time and again observed that this trend of increasing complaints from Uttar Pradesh has continued over the last years is a matter of concern to the Commission, despite that the has set up its own State Human Rights Commission, has shown significant reduction of the complaints.

**Table No. 1.4 Custodial Deaths in Uttar Pradesh since 1998-99 to 2002-2003**

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Custodial</td>
<td>20</td>
<td>141</td>
<td>159</td>
<td>10</td>
<td>131</td>
<td>461</td>
</tr>
</tbody>
</table>

The problem of police brutality is Uttar Pradesh has a wide range of causes. The police force in Uttar Pradesh has an inordinate amount of power and discretion delegated to them by the legal system, the political climate and society in general. The internal award system, which provides monetary incentives or promotions for carrying out extrajudicial executions, also acts as catalyst. In addition, victims hail primarily from the disenfranchised, poverty-stricken, lower caste and illiterate sections of society, which generally lack access to the few legal remedies that actually exist. A lack of cohesion between local organisations has rendered the existing support system incapable of combating the problem. Furthermore, systematic and endemic corruptions in the police and within the politician and judicial agencies exacerbates the problem and ensures that such crime go unpunished. Police abuse of authority is so prevalent in Uttar Pradesh that the Allhabad High Court has observed that “A large number of petitions are coming up before this court with allegations against the Police that they are behaving like bandits, thieves, and rapists a petty criminal… The police are supposed to protect the people and not to rape, black mail or loot them. It is high time that the police also start behaving in a civilised manner.” Though the State government set up the State Human Rights Commission (SHRC) in October 2002, however, the Commission is yet to show any sings of activity. (SAHRDC 2003).

1.4 Causes

According to Ghosh (1983) custodial crime in police custody is a symptom and not the disease. The disease lies elsewhere. It is merely a reflection of the social milieu in which police work. It causes are multifaceted. This aside, various studies undertaken by government and non-government organizations have identified the following causes of custodial crimes:

1.4.1 Legal Cause :

The fist and foremost cause or root of the problem lies in a highly anomalous provision contained in the Indian Evidence Act, 1872, namely, Section-27. In the scheme of the Act, a confession made by a person in police custody in not admissible in court of law as evidence under Section-25 of Indian Evidence Act. However, by way of proviso, section-27 lays down that if a person in the custody of a police officer makes a statement leading
to the discovery of a fact, the same is admissible, whether or not it amount to confession. Different grammatical problems and linguistic vagueness have been generated by the placing and inept language of the section. Our concern is with matter that is more substantial. The fact that a statement can be rendered admissible, if it is represented to the trial court as a “discovery statement” and presented at the trial in the form of a confession marked as a discovery statement, a fact will known to every police officer acts as a lever to the police officer to use unfair means to procure such a statement. The police know that this is an easy method of circumventing the prohibitions based on practical wisdom, experience, of generations, and deep thinking. It is an unpleasant thing to say, but it must be said, that section 27 of the Indian Evident Act has been productive of great mischief, in the sense that it generates an itch for extorting confession which, in its turn, leads to resort to subtle, disguised action, physical or mental torture, cruelty or any other form of custodial abuses (Law Commission of India 1994).

The another reason for the continuation of torture and custodial violence is that police officials believe that they immune to use torture in defense of national interest, public purpose and good faith while exercising sovereign function of the State (Nair 1999). Indian legislation contains various provisions proving immunity from prosecution to certain groups of officials for any offence committed in the discharge of Sovereign Functions of the State. This way police officers enjoyed impunity during and after the militancy period in Punjab, terrorism situation in Jammu and Kashmir and states in North-East and rest of India (Amnesty International 1992, 2001b, 2003; Human Rights Watch 2006).

1.4.2 Organizational Cause:

(i) Work Pressure
One of the causes of custodial crimes is the tremendous pressure on the police to detect cases whenever there is surge in crime, and particularly heinous crime (Sen, 1998, Bajpai, 1995; Rai, 1996; Marwah, 2003). The First Report of the National Police Commission has observed that unfortunately several police officers under pressure of work and driven by a desire to achieve quick results, leave the path of patient and scientific interrogation and resort to the use of physical force in different forms, to
pressure the witness/suspect/accused to disclose all the facts known to him” (National Police Commission 1979-81).

(ii) Lack of Supervision
Administrative reasons like lack of proper supervision of the functioning of the officers at the police station level may instigate commission of custodial violence. Officers at the police stations level feel that their activities are not being monitored by supervising officers. They take the liberty of working recklessly including in perpetration of custodial crimes (Srivastva 1998; Subramminum, 2004).

(iii) Outdated Police Structure
The problem of custodial atrocities lies in Police Act, 1861 which is a basic law and remained unchanged. Particularly due to lack of political will to re-define the role and responsibilities of the police officials with recent developments. The legal deficiencies in the police act is helpful to curb out where problem under modified act by redesigning the functions and role of police officials (National Police Commission 1979-81, Robeiro Committee 2000; Padmanabhaiah Committee on Police Reforms 2000; Fatima 2003;)

The British expanded its empire in India with a policing model deemed ideal for colonial rule. The model was based principally on the experience the English had while they tried to enforce order in Ireland (which rejected rule from Westminster) through Irish Constabulary established under the Constabulary Acts 1822 and 1836. This model of Irish Constabulary sought legitimacy at Westminster rather than among the indigenous population. It was an alternative to an army of occupation with no community mandate whatsoever. On the structural level, it was highly centralized with a recognized chain of command from the individual constable, through chief constable to inspector, who in turn was responsible to chief secretary and lord lieutenant. Another significant characteristic of the model was that it firmly established the principle that the constable was answerable to the chief constable rather than law, the chief constable himself being responsible to central government. This Irish blueprint was considered as the ideal mechanism for solving a specific set of law and order problem
It is clear enough that from the point of view of the Colonies there was much attraction in an arrangement which provided so called ‘Para-Military Model’ organization and trained to operate as an agent of the central government in a country where the population was pre-dominantly rural, communications were poor, social conditions were largely primitive, and the recourse to violence by members of the public who were’ again the government’ was not infrequent. It was natural that such a force, rather than one organized on the lines of the purely civilian and localized forces of Great Britain (London Model) should have been taken as a suitable model for adaptation to colonial conditions (Jeffries 1952; Mawby 1990).

1.4.3 Social Cause:
Custodial atrocities and Brutality are rampant because of impractical demands and expectation of the society to take tough action. Even a large section of society feels that despite their excesses police carries out a necessary and unpleasant task of preserving and protecting the state. Given the complex nature of crime problems and the painfully show judicial process (that take years to decide cases and lets off the accused on technical ground), the public, in their desperation quite often approve of the police excesses if these restore tranquility and give hell to those dreaded terrorist, gangsters, dacoits and professionals criminals who let loose terror in the area and victimize thousands of unresourced citizens. The police men who confront these criminals and kill them in real or fake encounter earn people’s appreciation. The condoning public attitude of police highhandedness is used as an alibi for justifying police torture (Rai, 1999 Majumdar 1995; BPR&D 1993).

The Padmanabhaih Committee on Police Reforms (2000) has observed, “A large section of people strongly believe that police can not deliver and can not be effective if it does not use strong-arms methods against the criminals and anti-social elements of society. And these people include India’s political class, the bureaucracy, and large sections of the upper and middle class. In their own perception, the policemen feel that they are doing a job. They resort to torture for ‘professional objectives’ to extract information or confession in order to solve a case, in order to recover stolen property or weapons of offence; in order to unearth other crimes that an arrested hindered criminal may have
committed; in order to ascertain the whereabouts of other criminals; and in order to locate hide-outs another professional objective that the police often follows, which is to terminate the criminality of a professional criminal, who could be a burglar, a robber or a gangster, or even a terrorist by maiming him, by making him lame, rendering him incapable of further crime”.

1.4.4 Economic Cause

Indian Police Commission (1902-03) found strong evidence of widespread corruption and police harassment throughout the country. The Report of the Commission narrated, “The forms of the corruption are very numerous. It manifests itself in every stage of the work of the police station. The police officer may levy a fee or receive a present for every duty he performs. The complainant has often to pay a fee for having his complaint recorded. He has to give the investigating officer a present to secure his prompt and earnest attention to the case. More money is extorted as the investigation proceeds. When the officer goes down to the spot to make his investigation, he is a burden not only to the complaint, but to his witnesses, and often to the whole village. People are harassed sometimes by being compelled to hang about the police officer for days, sometimes by attendance at the police station, sometimes by having him and his satellites quartered on them for days, sometimes by threats of evil consequences to themselves or their friends (specially to the women of the family) if they do not fall in with his view of the case, sometimes by invasion of their houses by low caste people on the plea of searching the property, sometimes by unnecessarily severe and degrading measures of restraint. From all this deliverance is often to be brought only by payment of fees or presents in cash.”

The Third Report of the National Police Commission (1979-81) has also observed that police powers which involve the exercise of considerable discretion in the day to day working of the police and, therefore, give scope for corruption and malpractices accompanied by extortion and harassment to the public. The power of arrest is the most important in this category and deserves a close look from the angle of reducing the scope for several malpractices. The Commission further stated that around 60 percent of the total arrests made by the police are unnecessary and unjustified. It is obvious that a major portion of the arrests were connected with very minor prosecutions and estimated that
43.2 percent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

1.4.5 Political Cause:

Even after six decades after independence, the police in this country is perceived as authoritarian agent of State rather than an agent of law. Political interference at the local level, in the higher echelons and in every day functioning. The incentive to bad officers is to benefit from powerful patronage. Honest officers who discern their duty as serving without bias, fear or favour find themselves labeled as uncooperative, difficult and unhelpful and are sidelined into non-operational roles. Allegiance to power centers outside of the police means that the chain of command is weakened; lines of control get blurred within the force and the ability of superior officers to marshal their forces or make them accountable for wrong-doing is severely compromised. Political interference has a chain reaction and gets institutional in a negative sense resulting in the subversion of existing structures of supervision and control within the establishment. The power of transfer and ability to dam or further the career paths of individual officers make the police unable to resist outside influence, whether this comes from powerful societal or political elements or political superiors. Transfers have become manifest negotiable instruments. It is constant threat hangs like the sword of Damocles over their heads. Eager to please, at times police itself tend to resort to politicking and hobnobbing with functionaries outside the system for personnel favors and gains. All these make the possibility of professional policing a distant dream (CHRI 2002; Chattoraj 1999, Rao 2001; Saha 2002).

The Report of Shah Commission (1978) while investigating police atrocities during emergency has observed that the police committed atrocities on a wide scale during the emergency. The manner in which the police was used and allowed themselves to be used for purposes some of which were, to say the least some police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations, which intended to be favorable to the ruling party and subverting the rule of law". 
Similarly, the National Human Rights Commission (NHRC) time and again has observed that today the country is witnessing the disturbing spectacle of politicisation of crime and criminalization of politics. The Report of Vohra Committee (which the Commission submitted in counter affidavit in the matter of *Prakash Singh & Others vs. Union of India, writ petition no.310 of 1996*) recognized that the ominous trend of criminal, political and bureaucratic nexus assuming alarming proportions, combined with politicisation of the police, they pose real threats to the very survival of democracy. The Commission further observed that the insulation of investigative function of the police from political and other extraneous pressures as essential to restoring confidence in the police and to reducing of complaints of human rights violations by the members of the force (*CHRI 2002*).

**1.5 Consequences**

Custodial crimes have multiple consequences on individual personality, family life and social functioning of communities and society at large. Torture is always aimed at the victims’ vulnerable points both physical and mental. It is because theses vulnerable points are overall the same in people of all societies. Different types of injury following torture are therefore small between different parts of the world. The physical injuries, some times present for whole life, have the effect of continuing the torture long after the detention. Pain, scars and deformities will be continuous reminders of the torture. When Government officials use rape, the suffering inflicted might go beyond the suffering caused by classic torture, partly because of the intended and often resulting isolation of the survivor. In some cultures, a rape victims may be rejected or formally banished form her community or family. This rejection greatly hinders the psychological recovery of the victims and often condemns her to destination and extreme poverty. Moreover the stigma attached to sexual violence, official tortures deliberately use rape to humiliate and punish victims but also to destroy entire families and communities (*UN 2008*).

The arrest and detention in police custody itself creates a psychological impact on the detainees. The anxiety, fear and stress of being arrested and detained causes mental pressure or trauma and stress on the detainee. The suspect or accused person comes into police station in a state of shock and it varies enormously from person to person with respect to their capacity to cope with situation. The detainee spends a large part of the
time in police custody where the interrogation takes place. The police interrogate arrested persons in secret without recording the arrest. The detainee is under tremendous psychological strain during interrogation due to low mental and physical condition. The process of interrogation and surrounding circumstances in custody affects the mind of the arrested person which infuses him to crumble. It builds up a kind of pressure on the mental state of the person interrogated (Rao 2000).

By torturing the body, the torturer’s aim is to destroy victim’s mind (Skylv 1999) Torture in police custody is considered as an instrument to impose the will of strong over weak by suffering Torture is wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it.” Torture is anguish squeezing in your chest, cold as ice and heavy as stone and parlaying as sleep and dark as abyes. Torture is despair and fear and rage and hate. In all custodial crimes what is real concern is not any infliction of pain but the mental agony which a person undergoes within four walls of police station or lock ups whether murder of a man and rape of a woman in police custody, the extent of trauma, a person experiences is beyond the purview of law (D.K. Basu vs. State of West Bengal, AIR 1997 SCC 610).”

Although a focus and physical and psychological sequel of torture is essential, however, simply concentration on individuals’ symptomatology, may the loose the sight of its political and social dimensions. Torture creates enormous amount of fear and insecurity on victims and its environments. The spill over effect torture has from Individual to family and community. The social impact of torture including feeling of insecurity, feeling of alienation, stigma, apathy with democracy and governance, feeling of alien country, lack of social support like shelter, food, livelihood, education of children and marriage etc( Wallace et al. 2003). The effect of custodial violence or police brutality goes beyond the immediate victims and their families. When people in society perceives an act by a police officer to be unfair, unreasonable, unnecessary, or harassing, especially minority communities are the victims, that perception may provide the impetus for riot, destroying public property, unrest and societal disturbance, resulting in destruction, violence and causality (Reid 1987)
According to Genefike (1999) the different rehabilitation models developed which are used at many centres and programmes worldwide by IRCT (International Rehabilitation Council for Victims of Torture). One of them is Holistic approach, where various aspects taken into consideration the Psychological, Somatic, Social, Legal, Spiritual and Cultural aspects. A point of conceptual importance is that considering Torture Survivors to be sick but simply to have normal reactions to a very abnormal event. The main treatment and Principles are; (1) to treat physical and psychological symptoms at the same time; (2) to secure the patient, trust and confidence; (3) to respect the individual; (4) to avoid situation which remind the patients of Torture and (4) to inform about examination to the victims of torture.

1.6 Theoretical Perspective:

The social science research in general and criminological research in particular has been guilty of a failure to recognize State Crime. Until recently, the majority of criminology researches have focused on the illegal action of individual and organization. Less attention has been given to Institutional anomie or State criminality. However, since the late 1980s, a growing number of criminologists have pointed out the role of state in the commission and facilitation of crime. State crime is an activity or failure to act that breaks the state’s own criminal law or public international law (Ross, 2000a, 2000b, 2003). State crime generally consists of illegal harmful action committed by a country’s coercive organizations such as police, national security and military agencies (Bequip 1978; Bryant1979; Icardi 1980). The state crime is pervasive and committed very frequently by all types of countries from democracy to totalitarian and from capitalist to communist one. Apparently, no state is immune to use repressive tactics irrespective of developed or developing countries regardless of the nature of governance and political systems (Turk 1982; Bark1991; Kramer 1994; Johnson and Johnson 1994; Doing 1996; Cohen 2000; Green and Ward 2004). The recent example of State crimes have been recorded by the Truth and Reconciliation Commission set up in different countries emerging from the period of internal unrest, civil war, or dictatorship. The reports of these Commissions provide the most authoritative documents and evidences on state terrorism and other forms of crimes or human rights abuses, which eventually become a public debate on human rights violations and social justice globally (Stanley 2005).
The coercive process of the State machinery erodes the foundation of human rights. Increasing concentration of power in the hands of the executive has becoming alarming. It shows the might and the dominance of the State in its myriad forms. Human rights activists, civil society organizations including human rights commissions as well media and public fora have condemned the state action for their deplorable disregard for fundamental freedom and human dignity in police custody (Srivasatva 2002).

Criminality has been subjected to diverse theorizations from historical to contemporary periods. The prominent theorizations have been as Pre-Classicalism, Classicalism, Positivism and Radicalism. The theorizations of classicalists that treat all forms of criminality as a freely willed human conduct still has most profound impact on the official line of thinking on criminality or deviance. Law presumes that all the criminality is a product of freely willed action of the wrongdoer. The free will theorization was scientifically contested by the positivist revolution that preferred to view criminality in the determinist frame. To the positivist all criminality was either biologically determined or psychological determined or sociological determined or economical determined. This implies in viewing criminality in the relevant deterministic frame only. However, the radical theorization prefers to view criminality in terms of system (political) that criminalizes the behaviors and the role played by the criminal justice system in general and police system in particular( Pandey 1991; Walklate, 1998 ).

The radical approach rejects liberal reformism and strengthens the power of the State over poor. The radical approach is concerned with abuses of power of State caused crime in society (Ahuja 2000). The emergence of ‘radical ’approach to deviance can be traced through a gradual process of shift from the liberal pluralist positions which characterized ‘mainstream’ criminology in the 1940s and the 1950s. Early criminological thought popularly called conservative, traditional or orthodox criminology concerned itself, upto late 1930s, with the pathological nature of the deviant act. In 1939, E. H. Sutherland offered a “social process” view of criminology. Ewin Sutherland also confronted the way the legal approach define the crime when he introduced the concept of while collar crime. White collar crimes are committed by respectable members of society (often high status people) in the context of their legitimate occupation.
However, Sutherland incorporated into this conception, activities that are not define crime by the criminal law rather much of this activity evokes a response from regulatory or civil law. The “social structural” theories of Merton (1938) and Cloward & Ohlin (1960) drew attention to the functioning of social structure in the causation of crime. For locating the cause of crime, they advised criminologists to look for socially structured sources of ‘strain’ within society. The social structure and social process theories shared in common view that crime is ‘normal’ rather than a pathological condition and criminal like any other person. The higher and lower rates of crimes in different societies were explained in terms of different social conditions and social experiences. Then developed a view in the 1960s, which described crime as nothing more than a label attached to conduct of the people, and what was needed to be explained was variations in labeling behavior (Backer 1963). Crime came to be thought of as a status applied to behavior, not as a particular kind of act. This was followed by a development of a new criminology or a new deviancy theory in the 1970s which focused on ‘reaction’ and ‘social control’ in giving rise to deviance. According to it, too much control is irrational and dysfunctional. The overreaction of those in power creates more deviance which further raises the level of coercive strategies necessary to maintain control.

The emergence of critical perspective of criminology in 1970s, with the work of Paul Taylor, Ian Walton and Jock Young (1973) seek to explore the ways in which the variables of class, race and gender are played out in the criminal justice system. The use of the label is ‘critical criminology’ employed by different writers intending to invoke differing frames of analysis. It is used here to identify those who have concerned themselves with the multiplicity of way in which the State deploys its use of power.

Weber argues that only possible way to define that state in terms of monopoly of physical force. He conceptualizes state as bureaucratic organizations exercising domination over society and having a monopoly of legitimate violence. A state is human community that claims the monopoly of the legitimate use of physical force within given territory and legitimacy. He also says that the ‘right to use physical force’ is bestowed by the state and that ‘the state is as relation of men dominating men, a relation supported by means of legitimate ( i.e. considered to be legitimate violence). The state is about power and
domination which have to be seen to be legitimate and require that subjects are obedient to the authority of the State; such obedience is secured through emotions, fear and hope by means of interest (Weber 1970). Critique of the ‘Weber’ concept of domination and legitimacy through which he defines the state as a form of concentrate power which is not derives from elsewhere. This means that he does not conceptualize state power as driving from economic class power, there may be a relation between two empirically but conceptually they are totally distinct. This has lead to his critized for failing to theories the link between capitalism forms of state and the state as an embodiment of class power (Held 1983; Dahrendorf 1959).

In this context, Marxist or Conflict theory can be found in the writings of various criminologists. Arguably the work of Chambliss (1975) *Towards a political economy of crime* has been particularly influential. Within classical Marxian the state is seen as contradictory, on the one hand, it is conceptualized as part of the political superstructure arising from the economic class structure of society and as representing the interests of the economically dominant class; which derives from its economic position and which is supported by the state ‘s monopoly of violence. On the other hand, within Marx’s writing, some action of the state are conceptualized as a response to working class pressure an as being in the interest of the working class. Marx shows this in his analysis of the struggle over the length of the working day in 19th century Britain. Thus, according to Marx, pressure from the organized working class led to state intervention in the economy on behalf of the working class; despite the fact that he conceptualizes the state as representing the interest of the capitalist class. Chambliss’ work is a clear attempt to use Marxist theory to construct a political economy of crime. Marx himself had little to say about crime or the law, but the general tenor of his views on society and social relationships can be translated into the criminological context. As Chambliss argues, the underling logical development of the capitalist process, inevitably results in more and more situations where those who have and those who do not are put in conflict with one another. Sometimes conflict is violent; more often it results in the behavior of those who do not have being labeled as criminal. Thus, for Chambliss…“The Criminal law is not a reflection of custom…but a set of rules laid down by the state in the interests of the ruling class, and resulting from the conflicts that inhere in class structured societies; criminal
behavior is, then, the inevitable expression of class conflict resulting, from the inherently exploitative nature of economic relations”. Further Criminality is simply not something that people have or don’t have; crime is not something some people do and others don’t. Crime is matter of who can pin the label on whom, and underlying this socio political process is the structure of social relations determined by the political economy. “So for Chambliss the underlying cause of crime lies not with individuals or their greater or lesser acceptance of cultural norms and values, it lies with the state and the political and economic interests which are necessarily served by the law and its implementation. The state becomes an instrument of the ruling class enforcing laws.

A similar theoretical framework is found in the work of Quinney (1977) *Class, State and Crime*. While talking about the political crime, Quinney was referring to criminal behavior as a ‘conscientious’ activity; not the produce of poor socialization or a deficient personality, but a political expression. In other words, it is not the behaviour which is criminal but the action which is taken against it which renders it criminal. Quinney was endeavoring to draw attention to the ways in which definitions of what is and what is not problematic become taken for granted and embedded in social relations, a process which serves the interests of the powerful much more readily that it serves the interests of powerless. Thus, his argument was a structural rather a conspiratorial relationship.

Further, Quinney went on to construct a typology of crime which could form the central focus of a criminology informed by these ideas. In this typology he talks of crime of domination (police brutality, white collar crime, and governmental crimes), crimes of accommodation and resistance (theft and homicide produced by the conditions of capitalism) and terrorism (a response to the condition of capitalism). Essentially this position reflects a view of the causality of crime as being an expression of the desire for social change, that is, as a political act. Both of these versions of criminology have two themes in common. Put simply, they both see crime as a product of the behavior of the authorities rather than a product of individuals. In other words, this kind of Marxist theorizing endeavors to further the labeling perspective’s concern with the power to label. The Neo-Marxian theorist, Antanio Gramsci developed the concept of hegemony to explain the process of cultural domination. The concept of hegemony refers to a process
by which the dominant class does not merely rule but leads society, thereby enjoying a
moral and intellectual authority for the continuation of its domination, which then rarely
faces any serious threats. Gramsci explains the concept of consent generations, the use of
force by making a distinction between civil society (consists of church, schools, trade
unions and media), and political society or State (consists of government, courts, army
and police). The state generally resorts to violence when hegemony is openly challenged.
In this process, the state loses its ideological credibility. Thus, use of force by police a
tool to hegemonies the subordinate classes (Gramsci 1971; Rhoads, 1990).

The work of Foucault in examining State power is also relevant to the present study.
Foucault saw the way in which power is exercised within state affairs and institutions of
criminal justice system. Foucault said, the bio power especially concerned with power
over the body, power is manifest first and foremost in its relationship to the body: the
most obvious and compelling power that one person can have over another is the power
to interfere with his or her integrity (bio power including torture). Although Foucault
examines torture in 18th-century France, his approach to the use of torture as
ideologically based punishment is still relevant today. Foucault stresses the instrumental
and utilitarian nature of modern punishment. The use of punishment serves the
ideological goals of the state, at least in the state's theoretical assumptions about how the
use of a particular form of discipline will impact on society. Foucault's analysis
concentrates on the transformation of punishment from disciplining the physical body of
the offender to focusing on an offender's soul. Foucault suggested that the purpose of
torture was not to demonstrate why the law was enforced but to demonstrate who its
enemies were. Torture, therefore, must be seen as a process; torture is an expression of
state power and a method of constituting and expressing the domination of the state over
its subjects. Accordingly, it establishes and maintains conformity to state goals. Foucault
contends that the institutionalization of state torture to obtain information or confessions
is just one of the state's strategies. The torture situation itself is focused on creating
"truth." For the ruling regime, objective truth is always in danger of being forgotten but is
produced through the use of torture. More than this, the use of torture serves to transform
an individual into the enemy. The use of torture fabricates the enemy for all to see and
thus validates the state's use of torture. This transformation is perhaps the most important aspect of torture for Foucault (Foucault 1977).

In view of the above, the present study of custodial crimes in police custody could be located within the framework of radical, conflict and critical school of thought as these have emphasized that crime is an ideological construct, and the conventional adoption of legalistic definitions of crime is inherently. The radicalism challenged the legal determinism and adopted humanistic way of defining crime. A humanistic definition of crime has been advanced by Schwendiner and Herman (1970), who called for a definition that would focus on objectively identifiable harm to human beings and violations of human rights as the criteria for labeling an activity as a crime.
1.7 Structure of the Thesis

There are nine chapters in all. **Chapter 1** introduces context of the problem, conceptual understanding and theoretical perspective of the study. **Chapter 2** presents legal framework of the study. **Chapter 3** reviews relevant empirical studies undertaken in India and abroad and formulate a conceptual model based on literature review. **Chapter 4** elaborates rationale, objectives, assumptions, scope and methodological consideration and identifies a method for the study. **Chapter 5** describes the locale of the present study. **Chapter 6** demonstrates the socio-demographic profiles of the individual victims of custodial crimes. **Chapter 7** presents descriptions of the cases studies on custodial crimes in police custody. **Chapter 8** highlights the results in forms of the emergent themes across cases and discusses in the light of existing studies in the domain. **Chapter 9** attempts to assess of the assumptions and draws the conclusions out of it as well as recommends policy implications and actionable suggestions including areas for future studies on custodial crimes in police custody.