INTRODUCTION

Human rights are the basic rights of every individual against the state or any other public authority as a member of the human family irrespective of any other consideration. Thus every individual of the society has the inherent right to be treated with dignity in all situations including arrest and keeping in custody by the police. Rights of an individual in police custody are protected basically by the Indian Constitution and by various other laws like Code of Criminal Procedure, Evidence Act, Indian Penal Code and Protection of Human Rights Act. These rights are also recognized by various international documents like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In spite of these international and national legal standards for the protection of rights of persons in police custody, human rights violations in police custody are endemic in India and are tarnishing the image of India abroad. Since the police play a vital role in a democracy not only with respect to maintenance of law and order but also in dealing with the rapid increase of crime rates in the criminal justice system, policy of police must strive to attain objectives like fairness, consistency, tolerance of minority views and other values which are inherent in a society. Being the visible symbol of state authority, police should see that their actions are not affecting the liberty and freedom of individuals and not infringing the basic human rights values of the suspects in custody, while fulfilling the avowed objectives of prevention and investigation of crimes.

There are frequent instances where the police, who are entrusted with the duty to enforce law and order, are violating the human rights.\(^1\) It is an admitted fact that when the police interrogate suspects in a crime, they employ third-degree methods. It includes torture either by not recording the arrest or deprivation of

liberty in the guise of a prolonged interrogation. Experience shows that during the course of investigation, worst violations of human rights take place.²

Police is, no doubt, under a legal duty and has legitimate power to arrest a criminal, to interrogate him during the investigation of an offence but it must be remembered that the law does not permit use of third degree methods and torture of accused in custody during interrogation and investigation of the crime.³

**Conceptualisation**

The term 'police' are defined as the civil force of a State, responsible for maintaining public order.⁴ The term 'police officer' would include any member of the police force appointed or deemed to be appointed under the Kerala Police Act. The term should not be construed in so wide a sense as to include persons on whom only some of the powers exercised by the police are conferred.⁵ It would also include a special or an additional police officer appointed under Sections 21⁶ and 22⁷ of the Kerala Police Act.

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³ Id., p. 621.
⁵ M.C. Desai (Ed.), Venkata Ramaiya's Law Lexicon with Legal Maxims, Vol. III (1996), p.1847. The expression 'police officer' used in Sec 523, of Criminal Procedure Code is to be construed strictly and to include only police officers properly so called. The expression is not to be construed liberally so as to include officers of other departments on whom certain powers of a police officer may have been conferred for certain purposes. The expression will not include customs officers though the latter have been invested with some powers of a police officer. Assistant Collector of Customs v. Tilakraj Shiv Dayal, 1969 Delhi 301, p. 302.
⁶ Section 21 reads: "The District Magistrate may, whenever and for such time as he may consider it necessary to do so for the preservation of the public peace or public safety, by public notice or by order directed to individuals, prohibit-
(i) the carrying of swords, spears, bludgeons, guns or other offensive weapons in any public place;
(ii) the carrying, collection and preparation of stones or other articles intended to be used as missiles, or of instruments or means of casting or of impelling missiles;
(iii) the exhibition of persons, corpses, figures or effigies in any public place; and
(iv) the public utterance of cries or slogans, singing of songs or playing of music."
⁷ Section 22 reads: (1) " The District Magistrate may, whenever and for such time as he may consider necessary, by public notice or by order directed to individuals, prohibit the delivery of public harangues, the use of gestures or mimetic representation and the preparation, exhibition or dissemination of pictures, symbols, placards or any other objects or thing, which-(i) may be of a nature to outrage morality or decency; or
(ii) are likely, in the opinion of the Magistrate, to inflame religious animosity or hostility between different classes or to insight to the commission of an offence, to a disturbance of the public peace, or to resistance to law or lawful authority.
(2) No prohibition under this section shall remain in force for more than fifteen days unless the Government, by notification in the Gazette, otherwise direct."
The term 'custody' is defined neither in procedural nor in substantive laws. The word custody means protective care. The expression 'police custody' as used in sec. 27 of Evidence Act does not necessarily mean formal arrest. It also includes some form of police surveillance and restriction on the movements of person concerned by the police. Thus a man may be in custody without having been formally arrested. Custody includes a state of affairs in which the accused can be said to have come into the hands of the police or have been under some form of police surveillance or restriction on the movements by the police.

Courts have extended the meaning of the term 'custody' in its strict sense to include a situation where the detenu may have been called to the police station for the purpose of interrogation and from the time that a person is placed under arrest. In other words, custody commences from the moment the person affecting the custody exercises some legally physical control over another.

The accused even after his remand to judicial custody can, subject to his right to silence, be questioned by the police with the permission of the Magistrate in any place and manner which do not amount to custody in the police. Police custody commences when a Police Officer arrests a person by actually touching or confining his body or when the accused submits to the custody by word or action or offers to give information leading to discovery.

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9 Gurdial Singh v. Emperor, A.I.R 1932 Lah. 609, p. 611. In fact, actual detention or confinement is not essential, suffice it will be if the accused is submitted to custody by action or by word of the police., N.K. Jain, "Custodial Crimes - An Affront To Human Dignity", Human Rights Year Book (2000), p. 64.


Custody means more than possession, it means care. When a judge grants 'custody' over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this must be used to promote the health of the offender.\textsuperscript{14}

The term arrest is highly comprehensive which consists of arrest made by an authority competent to do it and that made under the order of the criminal or civil court. Custody commences, when the police use its power to detain an accused or suspect in which the element of arrest may not be present.\textsuperscript{15} Police very often use the term 'apprehension instead of arrest', whenever they investigate the cases. But the field study shows that person taken in to custody do not feel any difference between arrest and detention.

\textit{Review of Works of Similar Interests}

Numerous recommendations, designed to improve custodial health and safety, specifically in police and prison custody, were made by the Royal Commission into Aboriginal Deaths in Custody in Australia.\textsuperscript{16} Evidence of corruption was shockingly disclosed by the only nationwide study of police practices ever made in the United States.\textsuperscript{17}

India may be the first and the only country in the world to appoint a Torture Commission to investigate alleged cases of torture in the erstwhile Madras Presidency. In its report submitted in 1855, the Commission found that the practice of torture was frequent in the then existing police sub-culture. Even though the British rulers were aware of this loathsome practice, they tolerated it and silently allowed and encouraged it.\textsuperscript{18}

\textsuperscript{14} Supra n. 2, p. 619.
\textsuperscript{15} In every arrest there is custody but not vice versa and custody may amount to an arrest in certain cases but not in all cases. N.K. Jain, op. cit., p. 63.
\textsuperscript{17} The study was completed in 1931 by the National Commission on Law Observance and Enforcement, generally known as the Wickersham Commission. Use of the third degree was the principal focus of the report, Alan Barth, \textit{The Price of Liberty} (1961), pp. 35-36.
An important development took place in Bengal 1801, when Lord Wellesley decided to institute enquiries into the causes of the failure to preserve peace. Similarly in Madras, a committee on the police was appointed with the same objective by Lord William Bentick in 1806. The Court of Directors of the East India Company set-up a special committee of their own in 1803, to look into the administration of justice and police in the Company territories. According to the instructions of the committee, the police functions were transferred to the revenue department. The control of the police was taken away from the district judge and given to the collector. The instructions insisted strongly upon the maintenance of the village police in every village as the best security for internal peace.\(^{19}\)

The selection committee appointed in 1832 to report on the affairs of the East India Company also commented on police administration. The subordinates were reported to be corrupt, inefficient and oppressive. The superior officers were unable to exercise adequate supervision and control. Later, the Court of Directors observed that financial considerations should not be an obstacle in the way of changes urgently required in the police set-up.\(^{20}\)

It is unfortunate that no concrete action was taken to implement the observations of the selection committee except in Bengal where a committee under W.W. Bird was appointed in 1833, which commented unfavourably on the subordination of the police to the revenue department. The functions of the Magistrate were separated from those of the Collector for a few years.\(^{21}\)

In order to review the working of the police system in the country, the Government of India appointed a National Police Commission in 1977


\(^{20}\) Id., pp. 40-41.

\(^{21}\) The Committee also expressed general concurrence with the view that the abolition of the post of the Superintendent of Police was a retrograde step and that the transfer of his functions to the Commissioners had resulted in want of uniformity in the direction and management of the police, *id.*, p. 41.
under the Chairmanship of Dharma Vira. Between February 1979 and May 1981 the Commission submitted eight reports to the Government of India containing a detailed list of recommendations on all aspects of police reform, some of which were fundamental for securing the much needed change in the police system.

The Commission through its recommendations took a major step to recast the obsolete Police system. The recommendations are not surmises or conjectures but are scientific findings after extensive research at the cutting edge levels by noted experts in various disciplines. It contained a number of extremely pertinent and pragmatic suggestions to improve the quality of policing.

Since independence many police commissions appointed by the State Governments have made many recommendations of similar nature and content. But it is quite unfortunate that the reports including these recommendations are not yet put into practice. The indifferent attitude of the appointing authority of Police Commissions in certain states is disappointing

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22 In 1973, the Government of India had already constituted a Committee to evaluate the training system of police personnel in the country. In the terms of reference, the Union Government asked the Committee to suggest measures for 'improvement in the relations between the police force and the public based on mutual trust, confidence and co-operation'. In 1973 itself the Committee submitted their report. The Government of Kerala has accepted their recommendations in principle., Alphonse L. Earayil and James Vadackumchery, Police and the Society (1985), p. 21

23 The National Police Commission was given wide ranging terms of reference covering the entire spectrum of police functioning. The NPC was required, inter alia, to enquire into the system of police investigation, prosecution, the use of improper methods by the police and the extent of their prevalence and suggest how the system may be modified or changed and made efficient, scientific and consistent with human dignity. The commission was also required to recommend measures and institutional arrangements to prevent misuse of power by the police. It was also required to recommend measures for the quick and impartial enquiry of complaints made against the police by the public about any misuse of police power The Commission expressed its concern over the prevalence of custodial torture by the police in the following terms: "Nothing is so dehumanising as the conduct of police in practicing torture of any kind on a person in their custody. Police image in the estimate of the public has badly suffered by the prevalence of this practice in varying degrees over several years. We note with concern the inclination of police officers, even of the supervisory ranks to countenance this practice in a bid to achieve good results by short cut means." National Police Commission, Fourth Report (1980), p. 27.


25 However these reports could not take an all India view with respect to the issues of radical nature, R.K. Bhardwaj, Indian Police Administration (1978), p. 69.
and leaves no place for hope for any kind of follow-up actions on the recommendations made by such condemned police commissions. 26

In January 1959, the Government of Kerala appointed a Committee to make reforms in police in the State. 27 The Government is very much concerned with the betterment of police-public relations to ensure satisfactory public appraisal of police performance in the State. 28 In order to review the police system and functioning, the Government of Kerala appointed a Police Re-organization Commission in the State in 1982. 29

Relevance of the Topic

Most of the violations of human rights take place in the management of law and order, by the police. In India, the history of human rights violations in police custody can be traced to British period. Even after 57 years of independence, in a democratic country like India, the police remains virtually a terror to the people and almost absolutely unaccountable for the violations of human rights of people in their custody. Though custodial torture, custodial deaths and other forms of human rights violations in police custody are very common today and the people are being fed up with hearing

26 Many human rights activists have opined that if the Government has no intention to implement the recommendations of these commissions for bettering the police service, system and administration, it is better not to appoint such commissions.

27 The Committee was given exhaustive terms of reference, but they could not submit a comprehensive report covering all the points in the terms of reference because of the political turmoil that intervened in the State then. Again in 1980 the Government appointed an Inspector-General of Police to examine and evaluate the police functioning in the State. The terms of reference were:

(i) to review the working of the police department in general with special reference to prevention, detection, investigation and prosecution of crimes and enforcement of traffic regulations; and
(ii) to review the training of police personnel and their welfare with special reference to its impact on public relations., G.O.(M.S.) 71/Home (A), 15 January 1959.


29 In the terms of reference, the Government asked the Commission to ‘examine the nature and special responsibilities of the police towards the weaker sections of the community and suggest steps to ensure prompt action on their complaints for the safeguard of their rights and interest’. It is only in the background of these police reforms, one can evaluate the opinions of the public regarding police performance in the State., G.O. (MS) 105/82/Home, 16th August 1982.
and talking of such custodial abuses, no static steps have been taken so far for a permanent solution.\textsuperscript{30}

Since conviction rate is considered as the yardstick to measure the ability of an investigating police officer, every police officer would try to accomplish the maximum conviction rate to his credit by hook or crook. This will definitely help to increase the rate of police torture. It is really pathetic that the successive governments have persistently refused to investigate the abuses reported in newspapers.

Nowadays custodial violence has become a part of the police culture and the incidence of custodial deaths is quite common. Though the academic world and judiciary have become conscious of the need of a study of the causes of human rights violations in police custody, its importation into the realm of Human Rights, on any systematic scale, is not yet attempted. In the field of Human Rights, a deep study of the causes of human rights violations in police custody from the legal standpoint has so far received little attention.

Though much has been written on this topic, most of them concentrate on individual issues. The area of human rights violations is so vast both in the national and international perspective. Hence the work is mostly confined to the state of Kerala.

Though many of the police officers have co-operated in a better manner, much difficulties arose in the task to penetrate the shields of defense of police personnel who tried to conceive the realities in interrogation, torture etc.

\textit{Objectives of the Study}

The study is intended to investigate the causes of human rights violations in police custody and abuse of their authority by using third degree

and inhuman methods on persons in their custody. Further it concentrates on
the ways by which the police personnel can be made duty-bound and thereby
make them withdraw themselves from committing custodial torture and make
them aware of the need for protecting the human rights values.

Research Problems

The major research problems dealt under this topic are:-

1. What is the pattern of human rights violation in police custody?
2. How far the rights of a person in custody are protected by the
   international covenants, Constitution of India and other laws?
3. Why do police resort to third degree methods?
4. What are the socio-economic and Political circumstances which lead to
torture in police custody?
5. How to strike a balance between the authority of police and protection
   of rights of Person in custody?
6. How to modify the existing provisions of various legislations
   conferring power to the Police so as to prevent custodial torture?
7. How to eliminate human rights violations in police custody?

Research Methodology

1. Sampling Frame:- Examination of relevant cases of custodial violence
   including custodial deaths and Custodial rapes.
2. Universe selected for study: - The study is concentrated in the state of Kerala.
3. Period selected for research: - The study is based on the data available
   from 1993 till date.
4. Data collection: - Both primary and secondary sources of data are relied on.
The sources of primary data are-

a) Questionnaire and Interview Schedule.

b) Certain informal interviews conducted with victims, their relatives, and civil liberties groups, police officials, judicial officers and human rights activists.

The secondary data is obtained from-

a) Decisions of Supreme Court and various High Courts.

b) Reports of Amnesty International.

c) Reports of National Human Rights Commission.

d) Reports of various civil liberties groups and human rights organizations.

e) Newspapers and periodicals.

f) Data collected from Police Academy, Thrissur and Police Training College, Thiruvananthapuram.