Conclusion
And
Suggestions
CONCLUSION & SUGGESTIONS

Human beings are born free. Freedom is god's greatest gift to men and women even to the criminals, detainees and prisoners for being a human. But due to custodial violence by police many persons like accused, detainees and prisoners have lost their freedom and human rights. From the date of civilization to the beginning of twenty first century, criminals were looked at with hatred. Society's reaction was entirely retributive and punitive and police lock-up and prison become a place for all violation of human rights by the police. The right to life, liberty, equality, dignity and property are the basic human rights and respect for these rights are the hallmark of any civilized nation.

The foundation of any democratic society is based on 'Rule of Law' and our country is not different from other democratic countries. Rule of Law and human rights are inter-related concepts and in an organized society, it is the function of state to maintain proper law and order and protect the basic human rights.

The human rights issues are vital to the human development and the continuation of human civilization. Police as the law enforcement agency has a duty to see that the people in a democratic society enjoy their fundamental human rights freely, i.e. right to life, liberty, security of person, right to fair trial, equal protection of law.

Thus man has certain rights which are universal, inalienable, inherent, and fundamental and basic, the enjoyment of which is the foundation of freedom, justice and peace in the state. Indeed effective maintenance of law and order will enable people to enjoy fully not only their civil and political rights but also social and economic rights.

What constitutes violation of human rights has been the subject of so many Conventions and Declarations. All these Conventions and Declarations aim at banning of torture in all its forms. However, in spite of the commitments made to eliminate custodial violence, the fact remains that it is more widespread now than ever before.

History of custodial violence is very old as human civilization. In ancient period violence in the form of torture was rampant and frequently applied by law
enforcement machinery on accused, detainees, suspects and prisoners. In the second phase of ancient period violence in custody was on peak. Torture, deaths, rape, illegal arrest, false implications were common made of custodial violence. Various Hindu scriptures prescribed severe punishments for criminals. All the barbaric mode of torture such as cutting of tongue, pouring molten hot lead in the ears, throat, cutting the limbs, whipping etc. were well practiced in this period. Even if the accused do not confess his guilt each day a new kind of torture was employed.

In medieval period punishment was very harsh. In this period if a man was found guilty of adultery he was stoned to death. Amputation of limb or limbs or flogging was practiced. Even criminals were taken to the top of the wall and a dish of milk was given to him and then he was caste down thence on the rocks. However, Akbar tried to prohibit harsh treatment which was further followed by Jahangir. During the reign of Aurangzeb, arbitrary arrest and detention were less in numbers.

In modern (British) period the policy was based on coercion. They maltreated the masses, denied civil liberties and tortured them in many ways. During British rule in India, custodial violence was considered legitimate to maintain kingship and sustain the domination. History shows that torture, illegal detentions, rape and deaths in police custody was the rule of law in colonial period. Criminal and suspects were humiliated and subjected to custodial violence. But with the passage of time major alterations were made in the existing legal system. In 1799, the punishment of mutilation was forbidden by Law in Bengal. Britishers through legislations prohibited illegal detention. Further they also tried to prohibit inflicting simple injury during custody for obtaining information or confessions.

Summary of chapter second shows that during interrogation the suspects are subjected to merciless beating with latheies, rifle, butts and whips. Even few persons were stripped and electric shocks are applied to their body and private parts. Chili powder is applied to the eyes and anus. Burning with lighted cigarette was also practiced. Such burns are given to private parts. Beside this pins were sticked all over the body.

The effect of these torture lead to intense headache and those who physically tortured suffer from severe muscle and joint pains, blood vomiting, melina, inability to use one or more arm. Those who are tortured in genitation develop loss of libido, impotency and other sexual abnormalities. There are psychological reasons, lack of
infrastructural facilities and administrative reasons which are responsible for growing incidence of custodial violence. It may be said that the problem of custodial violence is deeply rooted in this country and it can be prevented with the help and cooperation of police officers themselves.

Study of chapter three concludes that there are numbers of laws and Conventions which provide safeguards to the accused, detainees and prisoners against violence in custody. Article 2, 5, 9, 10 and 11 of UDHR gives protection to these persons. Similarly Article 7, 9, 10, 14 of ICCPR also gives protection. Beside this Standard Minimum Rules for the Treatment of Prisoners, 1977 United Nations Code for Conduct for Law Enforcement Official, Principles of Medical Ethics for the protection of prisoners and detainees against torture 1982, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 provides safeguard. Specially articles 1, 2, 10, 11, 13 gives elaborate provision in order to prevent torture. Basic principles for the treatment of prisoners 1990, Vienna Declaration, 1993 specifically focus on preventive laws to protect from torture menace. Although India has not ratified the Convention against Torture yet which was signed in 1997. So there is urgent need to ratify this convention as early as possible.

Chapter fourth concludes that beside International laws there are plethoras of normative safeguards embodied under national law. Constitution of India is most right based document which provides protection under Articles 20, 21, 22 of the Constitution. Beside these safeguards there are other legal safeguards provided under criminal procedure Code, 1973, Indian Penal Code, 1860, Section 330, 331 and 348 specifically deals with provision against torture. Beside this Indian Evidence Act, 1872, Human Rights Act 1993 also provides elaborate safeguard and procedure for the prevention of torture by the police officers.

Chapter five concludes that in order to prevent custodial violence ray of hope rests on the judiciary as it has always considered having an overriding duty to maintain public confidence and faith of law. Being the protector and custodian of people's right Indian Judiciary has taken prompt and serious action against the wrongdoer and controlled unlawful activities of custodial violence to a large extent. In Dalbir Singh vs. State of U.P.\(^1\) case honourable Supreme Court observed that torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and it is an affront to
human dignity and if stern measures are not taken to check the malady of the very
tence eating the crops, the foundation of the criminal justice system would be shaken.
Even in *D.K. Basu vs. State of West Bengal*² Supreme Court issued important
guideline in order to prevent arbitrary arrest, illegal detention and custodial violence.
But the fact remains that it is still continue and unabated.

The empirical study of KAVAL Districts of U.P. reveals the sad story of custodial
violence. Empirical study of KAVAL District shows that now a days police become
worst violator of human rights indulge in heinous and brutal crime committed in a
civilized and democratic country. Across the cases and questionnaire it was found that
some police officers expressed that violence in custody of police is a part of
investigation. Even some police officers said it is happening throughout in the country
in the lack of manpower and time constraints with investigating officers. In all the
cases of custodial violence victim’s families including spouses, siblings and parents
have faced challenging situations due to the occurrence of this crime.

Researchers has tried to analyse the survey data and found that custodial violence is
frequent in lock-ups, jails and prisons and mostly it is practiced by lower grade police
officers on the victim who belongs to lower strata of society. During survey it was
also found that torture and continues harsh treatment and not providing food to the
victim leads to the death of victim / accused in jail. Torture as a tool is not applied on
every prisoner, accused and detainees but used on them who committed grave nature
offences. According to police officers it is applied because of less sensitization for
human rights. The survey study also found that due to lack of time and workload they
(68% police) adopted torture mechanism and 24% respondent said they are adopting
for just getting promotion and 8% respondent said due to political pressure they are
adopting this method. They also said police do not want to use torture or violence
mechanism but it is universal fact no offender will confess the guilt unless there is
threat of fear. Whereas 84% respondent said yes due to fear accused confess
otherwise there is no mode to get truth. It is also found that 2% guilty police officer
are punished again 2% respondent said custodial death some time get mixed up with
encounter.

Thus the empirical survey gives a true fact and story of violence with the help of
questionnaire, interview and interaction with victim, their family, spouse and siblings.
The most shameful thing about violence is that it is committed by person in uniform whom power and duty is given to protect person from crime and criminals. But instead of protecting crime they himself indulge in such a heinous and brutal crime which resulted in rape, death and encounter. This research work gives a true finding of custodial violence which makes all civilized person and nations to hang their head with shame.

A nation is not a map on the paper rather it is people who make the nation. Today custodial violence is a harsh reality and stirs the conscience of every right thinking person. It is worst form of human right violation by the person/authority sporting khaki dress. The person accused of petty offences or suspected on complaint are arrested and subjected to torture in different form resulting into either death or permanent physical and mental incapacity. Custodial violence is committed not only by police but also by Para-military forces in disturbed areas. The police force undoubtedly is obliged by law to maintain peace and order in the society, if necessary may even use reasonable force to achieve the end but in the exercise of permissible use of force, the police force in most of the cases transgress all the limits and boundaries set by law. They thereby indulge not only in violation of human rights in different shape and size but it also culminate into decision of majority of law which may not be good in long term for any government of the day. In a civilized and democratic society police must maintain law and order and prevent crime but not at the cost of violence committed by them on accused and detainees which includes death, torture and rape in custody of police.

Custodial deaths thus generate more heat than light. According to the statistics of National Human Rights Commission the total numbers of cases of custodial death from the year 2001-2011 were 14,231. The National Police Commission recommended that in all cases of custodial deaths there should be mandatory judicial inquiries but judicial inquiry is ordered in rare case of high profile.

August Volijer in his book, the police and modern society states that the ideal police officer is expected to have the wisdom of Solomon, the courage of David the strength of Samson, the patience of Job, the leadership of Moses, the kindness of good Samaritan, the strategy of Alexander, the faith of Daniel, the diplomacy of Lincoln,
the tolerance of the carpenter of Nazareth and finally an intimate knowledge of every branch of natural, biological and social sciences.\(^3\)

The same spirit is conveyed in the following words in an essay on Police published in the Time Magazine.

"Nothing is tougher than being a policeman in a free society, the policeman is supposed to mediate family disputes that would try a Supreme Court Judge, Soothe angry ghetto Negroes despite his scant knowledge of psychology, enforce hundred of petty laws without discrimination, and use only necessary force to bring violators to Courts. The job demands extraordinary skills, restraints and character".

The extracts quoted above not only give some idea about the hazards involved in police work but also convey the nature of the qualities required in a policeman.\(^4\)

Police and public interact with each other in one-way or the other. But the police-public relations are not as good as it ought to be. Reason is that unfortunately, the police in India and perhaps in many other parts of the world do not believe in the concept of rule of law and violates rule/norms of human rights. National Police Commission has also indicated that the relation between the public and police is not good and observed as under:

Police – Public relations are in a very unsatisfactory state. There are several reasons for it; police partiality, brutality and failure to register cognizable offences are the most important factors which contribute to this sad-state of affairs. Police in fact harass even those people who try to help them.\(^5\)

Really police brutality includes custodial violence which is spread like epidemic in India & whole world. It has gone beyond legal provisions and procedures and is a big reason for unfriendly Police-public relations. They have no feeling of guilt in admitting that they violate the law frequently now a days and taking plea that they violate the law to protect the society form violators of law. They argue that our legal system is deeply in favor of the criminal. Our Jurisprudence would let a hundred criminals escape, but not a single innocent person suffer. How can they provide safety to the society when the law allows a hundred criminals to prowl in fear of letting one innocent person suffer? Hence their Jurisprudence let a hundred innocent men suffer,
but not a criminal escape. According to them, this makes good the laxity in law and brings about a balance in approach to criminals.⁶

But what is the truth in this contention because there are number of brutal case of custodial torture, custodial death and custodial rape all over the India. Custodial rape cases like Rameez Bibi case, Manorama Devi case and recent case of Soni Sori are showing shocking instances of brutality by police officers. Some conscientious police officers have questioned the propriety of such an illegal, immoral and inhuman practice as physical torture and have made efforts to check it. But there has hardly any impact as an overwhelming majority of officers are deeply rooted in their “practical wisdom” of saving the society by any means, fair or foul. It does not matter to them that in this process they themselves destroying the very fabric of our democracy. As regard to their claim to being the savior of the society, the distinction is dubious. Thus whoever breaks the law is a criminal or the police committing crime cannot be differentiated and treated differently.⁷

Sections 25 and 26 of the India Evidence Act, 1872 make confession made to a police officer irrelevant in evidence. If it is made to an ordinary citizen without, of course, inducement, threat or promise, it is relevant, but if it is made to a police officer under the same circumstances, it is deemed to be unworthy of credit. It shows the deep distrust of law of the very institution it created for investigation of crime and collection of evidence for the prosecution. Some police officers believe that use of third-degree method is the main reason/consequence of distrust of law. Since only that part of the confession or statement leading to a material discovery becomes valid evidence under Section 27 of the Evidence Act. Again there is a provision in the Criminal Procedure Code, 1973. Section 162 which say that no statement made by any person to a police officer in the course of an investigation shall, if reduced to writing, be signed by the person making it. Why? Because the person making the statement would not know what the police officer has actually recorded. It gives the scope, to add or delete materials that fits or do not fit into their story.⁸

According to National Police Commission⁹ Police, generally, use unwarranted physical force (third degree torture mechanism) on those who are under their custody or who are arrested for gathering information or confession. Police are notorious for
their illegal violence, torture, molestation and rape. There are some structural causes of custodial violence listed by National Police Commission which are as under-

➢ The training and outlook of the subordinate police make them prove to exercise illegal force from time to time.

➢ The inadequate facilities for investigation and detection of crime as factor contributing to Police violence.

➢ As the detection of crimes is a decisive indicator of personnel efficiency of Police Organization, police use violence in finding clues to detect the root of crime.

➢ Failure of detection is considered as the inefficiency of police investigating personnel.

The objective analysis of present study reveals that the custodial crimes are occurring not in vacuum rather there are some structural deficiencies in the police system which gives rise or perpetuates to custodial violence by police. The factors influencing crimes in police custody are political pressure, work pressure, greed for money and promotion. But the most important is pecuniary corruption, promotion and workload prompting to illegal/fake arrests and torture.

It is acknowledged fact that custodial violence by police has been widespread throughout India since long time. In spite of more than 66 years of independence the police remain virtually a terror to the people without any accountability. It is heart wrenching to note that day in and day out we come across with the news of blood-curding incidents of police brutality and atrocities, alleged to have been committed. The fundamental rights are guaranteed under part third of the Constitution. Human rights are incorporated under the scheme under various International Covenants/instruments nevertheless custodial violence is still abated. The main reason for the growth of torture and violence by police is overzealousness of the investigating officers fulfilling their professional duties.

However the Prevention of Torture Bill, 2008\(^\text{10}\) is drafted by Government of India. It includes torture by Government servants, including police officials, within the ambit of punishable offences. Under the proposed law, public servants and others responsible for causing grievous hurt or danger to life, limb or health of any person

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would be liable for being punished for torture. The draft legislation also makes inflicting mental torture a punishable offence. Public servants torturing anybody for the purpose of extracting information or extra-judicial confession from any accused would be punished under the proposed law.

It is provided in the torture bill that torturing anybody on the ground of his race, religion, place of birth, residence, language, caste and community would also be a punishable. It is provided that Government of India has to submit regular reports to the UN on measures it has taken to implement the Convention. The Convention also says that if extradition treaty has been signed by member countries, then a person accused of torture would have to be extradited. The maximum punishment prescribed for torture is 10 years. India signed the Convention against Torture in October 1997, but has not ratified the same despite repeated urge by human rights organizations and NGOs. Ratification is necessary for appropriate changes to be made in the prevailing laws.

Thus Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

However, no amount of punitive measure of governmental endeavor can be sufficiently deterrent. The ultimate key to the problem lies in the conscientious citizens. If the people of the society are alert about their rights and duties, they can combat such unlawful acts by raising their voices of protest in times of need and by seeking intervention of appropriate authorities to deal with the agencies responsible for custodial violence. As eternal vigilance is the price of liberty a violent public will definitely be a most deterrent factor against custodial violence.

On frequent violation of human rights of the accused and detainees in police custody these lines of Justice Krishna Iyer illustrate the factual position of human rights as "teasing illusion and promise of unreality."
Despite the above, the abominable figures regarding custodial torture have still not improved. One very simple reason behind this could be that persons who are supposed to protect people are themselves violating the law.

Suggestions:

In the light of the detail discussion on the subject following suggestions are made:

➢ Custodial violence should be made a crime by enacting a special law.

➢ Many cases of custodial violence can be prevented by law-enforcement agencies if they will follow the existing laws and guidelines related to arrest and detention.

➢ Directions given by Hon’ble Supreme Court though not a complete remedy should be followed as precedent by all the High Courts of the country and those who fail to comply must be prosecuted.

➢ The public and especially concerned authorities and group like NHRC, SHRC and the media must closely monitor police practices to see that executive (Police) is executing in a proper manner and protecting the rights given by the Constitutional law of the land.

➢ The Central Government should be urged to ratify the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment. However, government has signed it but failed to ratify the treaty on spurious grounds that existing laws are good enough to prevent custodial violence which is evidently not the fact.

➢ It has been recommended in the 177th Law Commission Report that the suitable amendment be made in the Code of Criminal Procedure providing that it will be duty of the police officers to ensure safety of arrested person and breach of duty should be made punishable offence. However, after thirty year, this amendment has still not been incorporated.

➢ The presence of an Advocate of the choice of arrested person during interrogation should be made mandatory and non-compliance of it should render arrest and detention illegal.
➢ The suitable amendment be made in the scheme of Cr. P.C making provision for adequate pecuniary compensation to the victim or next kin of the proved victim of custodial violence out of personal resources of guilty police officer.

➢ The police organization is virtually starved of financial resources which could enable the transformation of a colonial and obsolete organization into a modern and efficient one imbued with respect of human dignity.

➢ Due to increasing trend of custodial violence, the National Police Commission recommends the re-structuring of Police force, in a way which redresses the major structural sources of Police violence.

➢ Intensive supervision and professional guidance by the Sub-Divisional Police Officers and station house officers will reduce the custodial deaths.

➢ Interrogation cells manned by trained personnel must be separately opened.

➢ In the case of custodial deaths, magisterial inquiry must not be only mandatory but should be immediate.

➢ Police personnel are required to be trained intensively on law relating to custodial violence and skills of interrogation.
REFERENCES

1. AIR 2009 SC1674.
2. 1997 Cri LJ743.
3. Quoted by B. Sreekanth Reddy, Police in a Developing Society, p. 149.
4. Ibid.
7. Ibid.
8. Ibid.
10. For detail see Prevention of Torture Bill 2008.