CUSTODIAL VIOLENCE VIS-A-VIS HUMAN RIGHTS: A SOCIO LEGAL STUDY OF KAVAL DISTRICTS OF U.P.

ABSTRACT
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ABSTRACT

The quality of nation civilization can be largely measured by the respect it shows for the protection and promotion of human rights of human beings. The theme of human rights is of universal concern and it cuts across all ideological, political and cultural boundaries. But unfortunately now a day in the guise of national security and maintenance of peace and order the torture of accused, detainees and prisoners in police custody and encroachment on human dignity has become a matter of grave common concern. The rampant occurrence of custodial violence and death in police custody or lockups strikes a blow at the world’s greatest democracy and raised eyebrows of public at large and shaken the very faith in democracy. Police atrocities are common features of Indian scenario. This practice adopted by police personnel results in torture, rape, sexual assault and ultimately death. Even women are often coerced into providing sex for “favors” such as extra food or personal hygiene products, or to avoid punishment.

It is aggravated by the fact that it is committed by the persons who are supposed to be protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up where the victim is totally helpless. The protection of an individual, detainee or prisoner from violence and abuse by the police and other law enforcing officers is a matter of deep concern for country like India.

The 152 Law Commission has also very pertinently observed that the weaker section and the person belonging to low strata are the worst sufferers of custodial violence. It recommended that suitable requisite amendment should be brought about for preventing frequent custodial crimes. But over the years, henceforth the recommendation of Law Commission has not been translate into action by making desired amendment. Though crimes against detainees and prisoners in custody are common but only few perpetrators of custodial violence are brought to book and held accountable.

In 1980, Arun Shourie investigated 45 deaths in police custody in seven states. He found that “the patterns are uniform from one death to another, from one state to another, that generalizations are possible and victims were invariably poor. Several of them were hauled in no formal charges at all. Even in the cases of persons who were arrested, in an overwhelmingly large number of they are all accused of petty
offences." In some cases investigated by him, he observed that the bodies were so badly molded that it was not possible to hide the crime committed. The explanation of these deaths were, snake bite, heart failure on the way to the hospital, sudden illness, etc. Some police official said they died due to mysterious reasons, while the rest committed suicide. The accounts of suicide given have not verified even now-by hanging inside the lockup by using a 'lungi' or a belt, jumping out of a building or in front of a bus. Now the question arises whether these persons must continue to die simply because the police take 'advantage' of the laws?"

In *Olmstead vs. U.S.*¹ the American Supreme Court has remarked, "the police reflect the state and the state the society. If the government becomes a law breaker, it breeds contempt for the law; it invites every man to become law into himself, it invites anarchy". Thus, in democratic societies the police are charged with enforcing the criminal law and a host of regulatory laws designed to make society orderly and safe. To achieve these ends, the police have been vested with the authority and powers not available to ordinary citizens. In fact, the police are the only civilian occupation provided with the legal and physical means to enforce the law, including the use of state sanctioned force, when and if necessary. The power of the police is unrivaled in civil society and it is because of this the democracies place great emphasis on overseeing and controlling police action."

The 185th Law Commission report also contains recommendation for suitable amendment in section 27 of the Indian Evidence Act, 1872 with regard to the admissibility of confessional statement of an accused person while in police custody but nothing so far has been done.

The Andhra Pradesh Civil Liberties Committee reported in all the cases of custodial deaths judicial inquiry has been ordered. But the result of judicial inquiry has no consequence. It was shocking that where murders are committed by the members of the police force, they are being enquired by Executive Magistrates under Section 176 or by Commission of Enquiry which puts this class of public servants above law. This unconstitutional practice repeatedly legitimized by the state. The government is obviously afraid of subjecting the police to the ordinary legal proceedings because they may refuse to carryout illegal orders. Work to rule by the police force might mean enforcement of the constitutional guarantees and that may threaten the longevity of the government."
In spite of several efforts and achievements on human rights front at the international and national levels and by the Indian Supreme Court, the goal of human rights as a common standard of achievement for all people is still far off. Thus custodial torture, death, rape and molestation of the women by the police are a shocking reality. The subject still requires in-depth study.

REVIEW OF PREVIOUS LITERATURE

It would be appropriate at this juncture to make a review of the existing literature and available study material relating to problem of custodial violence vis-à-vis human rights jurisprudence. Custodial violence which includes torture, rape and deaths in police custody has drawn attention of human rights agencies, public, media and legislature over the past many years. The National Human Rights Commission has also taken a serious note of such incidents. In a democratic set-up, in order to ensure stable conditions and to enable its citizens to enjoy their fundamental rights and human rights without threat to their lives, liberty and dignity, it is the duty of the state to regulate brutal activities by the police on the basis of legal principles and laws.

It has been established by the earlier studies on the subject/topic that there are a number of safeguards or rights available to the detainees and prisoners in the Indian legal system. These safeguards have been provided under the domestic laws like Constitution of India, Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and also International instruments like U.D.H.R., Civil and Political Covenants, 1966, Convention against Torture protects the rights of the detainees and prisoners. This mandate of law is required to be followed by the police to protect the interest of the arrested persons, so that justice may be secured by preventing the custodial violence. The previous literature on the topic includes certain survey conducted by different agencies. The public opinion survey conducted by Bayley in 1965 concluded that “Indian public is deeply suspicious of the activities of the police. Considerable portions of the police were rude, corrupt, sometimes in collusion with the criminals and very frequently dealing unevenly with their clients.” The National Police Commission has also observed in its 5th report that the police continue to function as force against everyone – complainant, accused, witnesses and the public at large. Another survey conducted by Senior Police Officer in 1988 to assess the opinion of the people of Tamil Nadu about police performance revealed that only 31% believed
that the police image in India was good, while 73% said that policeman were only sometimes impartial in the discharge of their duties.

Again in 1993 Bureau of Police Research and Development in a study on custodial crimes identified following causative factors for occurrence of custodial deaths in India which are as under:

- Sadism in police
- Unrealistic public expectations about crime control.
- Failure of criminal justice system.
- Inadequacy of strength and resources in police.
- Inadequacy of laws.
- Lack of scientific temper and non-availability of facilities.

Following remedial measures were also suggested in the report:

- Tightening recruitment standards.
- Improving training standards.
- Improving the machinery for enquiry into complaints.
- Improving supervisory and leadership standards.
- Review and implementation of reports submitted by commissions/committees.

In 1994 James Vadakumehery on Custodial violence and death collected opinion from 254 police officers. Four thousand two hundred and forty six people were also selected from all walks of life to give their responses on use of torture in police custody. Few accused persons were also interviewed. Following were the main findings:

- 78.32% police officers admitted that the arrested people were kept in custody till a confession was obtained from them.
- 69.64% people from all walks of life were of the view that investigating officers extorts confession from the arrested person even by unfair means.
- 81.5% police officers admitted that third degree methods were used during interrogation.
- 38.82% accused person reported that the police took them into custody by ‘Informal’ arrest.
- 36.18% accused persons reported that they were kept in custody for more than 24 hours.
➢ 81.91% of the accused were produced only after confession of the guilt before the police.

➢ The study also revealed that the investigating officers employed practically all the methods and techniques to make the suspects plead guilty such as frightening, threatening, physically and mentally torturing while detaining them to obtain a confession.

➢ 67% members of general public reported that third degree methods were used by police only against criminals and suspects in crime.

Amnesty report 1992 has also quoted 415 cases of custodial death. Asia Watch and NHRC have also vociferously clamoring about violation of human rights in India specially custodial violence by police. From 2001-2010, 1504 cases of custodial death occurred in police custody and 12,727 cases of custodial death was reported in judicial custody by NHRC. National Crime Record Bureau (NCRB) has reported 481 cases of custodial death occurred in police custody and 715 cases of custodial death occurred in police custody of the persons to whom police have taken themselves in custody during (1999-2011).

HYPOTHESIS OF THE STUDY

The present study is based on the following hypothesis.

It is widely acknowledged fact that there are adequate legal provisions within the national and International frame-work dealing effectively with the evil and menace of custodial violence in India.

But the available data shows that conviction rate in the cases of custodial violence are pathetically considerable low owing to various factors like nepotism, corrupt practice and the lack of procedural fairness necessary for the administration of justice. Police uses violence specifically torture not only for extracting information regarding commission of crime but sometimes also in gross violation of protection of fundamental right of self incrimination under Article 20(3) and fabricating false charges against him.

The Supreme Court guidelines preventing custodial violence are not comprehensive but it is mere tiger on paper. It is ignored blatantly by police agencies without any evil consequences.

Mostly victims of custodial violence belong to poor and marginalized sections of society and therefore usually their cry and pain go unheard.
There is lack of in-depth study in the area of custodial violence exploring the nature, scope and reason of such violence.

The Convention against Torture and Inhuman Degrading Treatment is more comprehensive law on this subject but there is a need for specific adoption of the Convention and reading into the cases of custodial violence in India.

These are the few factors which ignited and prompted the researcher to undertake this academic venture of the thesis.

**OBJECT AND SCOPE OF STUDY**

The basic aim of this research work is to highlight the problem of custodial violence vis-à-vis police atrocities in India and to throw light on various aspects like causes, kinds, nature and dimension including the spate of legislations dealing with custodial crimes at national and international level in preventing and curbing it. The malady is deep rooted in Indian police system. In this research work an effort has been made to identify the factors which are responsible or which induces a police officer to opt torture or violence for confession of guilt by an accused.

The present study is a modest attempt to analyse the magnitude and nature of custodial violence with special reference to survey of 5 cities of U.P. (KAVAL Districts). The term KAVAL includes survey of Kanpur, Agra, Varanasi, Allahabad and Lucknow Districts and after analyzing data an attempt has been made to know the real cause and factors responsible for rampant torture in India.

In this research work researcher is tried to describe the stark reality or factual position with regard to custodial violence with the help of data collected through survey and assessed the data and cases reported by Media, Amnesty International Report, Crime in India, Human Rights Watch & National Human Right Commission. Beside this case of custodial violence has been taken with the help of interaction, meeting and interview with victim, victim’s family and siblings.

At last remedial measures are suggested to prevent the frequent torture by police in custody. This heinous crime is anathema in India so there is a need to draw public attention specially parliament towards the malpractices adopted for confession and gathering of an offence by police personnel at the cost of public expenses.
So, there is urgent need to prevent this crime. Thus, the problem of accountability of the police Institution is serious one. The National Police Commission pointed out some observation in its First Report (GOI 1979) which are as under:

"One of the fundamental requisites of good government in a democracy is an institutionalized arrangement for effectively guarding against excesses or omissions by the executive in the exercise of their powers or discharge of their mandatory duties which cause injury, harm, annoyance or undue hardship to any individual citizen."

Therefore, accountability means answerable for the proper performance of the assigned task given to the police officials. It means more than mere responsibility.

**RESEARCH METHODOLOGY**

For the purpose of research work doctrinal or non-doctrinal method has been applied. A doctrinal research means a research that has been carried out on a legal preposition by way of analyzing the existing statutory provisions and cases by applying the reasoning power. Thus any research looks at the following issues:

a. The aim of preferred values.

b. The problems posed by the gap between the policy goal and the present state of achievement.

c. Availability of alternative choice for the implementation of goals.

As my topic is survey based so I applied non-doctrinal legal research. This type of research is carried out by collecting and gathering data or information by a firsthand study. As it appears it is an inquiry that attempt to discover and verify general rules allowing us to understand why police behaves the way they do. For the purpose of empirical study data, legislations, Convention and cases of S.C., H.C. and N.H.R.C were collected analysed and discussed in perspective of human rights regime. Whereas for the non-empirical method data has been collected from KAVAL Districts of U.P. by using the questionnaire method for police and common man. Beside this an interaction and interview was conducted with victim and victim's relative and family.
i) Material used

In collection of textual material, reliance has been paid on Indian Journals, seminar paper presentations relating to police atrocities and brutalities. Beside this, various articles from magazines, newspapers and reports have been used. The statutes and case law are two primary sources of legal material statutory provisions at national and international level relating to custodial violence and cases of S.C. & H.C. & N.H.R.C. have been discussed extensively.

Digests and reports of National Police Commission, N.H.R.C., Human Rights Rapporteur, Amnesty International Report and Asia Watch Report have also been taken into consideration for the purpose of study. The analysis of the case law enunciated by the H.C. as well as S.C. and N.H.R.C. is obviously the backbone of any legal research work pertaining to human rights violations.

(ii) Data collection

a) Primary data: Primary data regarding topic is collected from Kanpur, Agra, Allahabad, Lucknow and Varanasi from Police Stations, Jails and lockup through the help of questionnaire.

b) Secondary data: At the national level the data has been collected from the published reports of the Government agencies namely, National Police Commission, National Crime Record Bureau, Ministry of Home Affairs, Govt. of India, New Delhi, Indian Police Journal, Amnesty International Report has also been consulted.

Chapterization

The present research work is split into 6 chapters dealing with different aspects of custodial violence in India in the shade of human rights jurisprudence. The introductory part of the study is devoted to the statement of problem, review of previous literature, object of study, scope of study, research methodology, data collection and use of relevant material.

Chapter I deal with the historical background genesis and development of torture in India. It discusses mode of torture or violence prevalent in ancient, medieval and modern India.
Chapter II deals with the nature and dimension of custodial violence in India. It discusses the basic concepts and meaning and definition of various legal terms related to custodial violence, different categories of custodial crime, factors responsible for violence and torture applied by police in police custody.

Chapter III provides International normative safeguards enshrined under International Conventions, Declarations and Principles on prevention of custodial violence. Whereas rights of accused, detainees and prisoners were discussed, extensively with reference to relevant articles in tandem with ratification of International law.

Chapter IV provides national normative safeguards available to the accused, detainees and prisoners in India. Beside fundamental right guaranteed by Constitution of India substantive laws dealing with the rights of the above persons are discussed in detail.

Chapter V Analyses the trend of cases relating to custodial violence and examines the role of judiciary and N.H.R.C. in curbing the problem of custodial violence. For this purpose, certain leading cases decided by the Apex Court and High Courts have been discussed. An attempt has been made to analyse the true impact of guidelines laid down by the honourable Court in some leading cases on the issue.

Chapter VI deals with the empirical study of KAVAL Districts of U.P. For the purpose of research work material has been collected with the interaction and interview with victims, victim family and siblings. The data has been collected through help of questionnaire on kinds, modes of violence prevalent in custody, factors responsible for such violence, reasons and lastly suggestions. After that it was analyzed and depicted with the help of graph and lastly concluded with some suggestions.

The work ends with conclusion finally recapitulating the nodal points of earlier discussion. This is followed by some suggestions, for the improvement of legal regime. In this way the ever increasing problem of custodial violence may be prevented if not fully eliminated.

CONCLUDING REMARKS

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 lathies, 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 stucked 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 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.\(^2\)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 fence 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 day's 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.

Researcher 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 hope 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.

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.

Thus 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. 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. 277, US 438.

2 (2009) (2) ALJ 661(SC)