Introduction
INTRODUCTION

Statement of Problem

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.\(^1\) But unfortunately now a days 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 a common feature 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 “favourites” 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. In a recent case of 2012 Ankit Garg an IPS Officer of the Chhattisgarh Cadre had been conferred the Presidents Police Medal of Gallery committed custodial rape of adivasi woman Soni Sori in police custody in Dantwara which is pity in a democratic country like India. 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 or poor’s 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.²

In 1980, Arun Shourie³ 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 on 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.*⁴ 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.

In 1993,⁵ the Prime Minister of India in his address to the Heads of Police of various states and Central Police Organizations called upon the policemen to prevent custodial violence. Shri Rejesh Pilot the then Minister of State for Home also emphasized the need for accountability on the part of police. He opined that the working of police should be transparent which would make it an effective step in prevention of custodial torture and death.
In 1993 Dr. Shiv Singh Sahay in his article on custodial crimes reported that the criminal - politician - corrupt bureaucrat nexus had two kinds of law in practice. One for the rich and the powerful persons who are considered above the law and another for the rest.

In 1993 The National Daily Telegraph published article on the deteriorating state of Human Rights observance in India where Mr. Saksena articulated that no one disputes that custodial deaths are a blot on the image of the Indian police. These can be eliminated under a more efficient police leadership, which no government seems to want.

In June 1985 Law Commission report also contained 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 that 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 the 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 1993 K.M. Singh in his report on custodial deaths mentioned that Law Commission of India recommended for a legislation to check custodial deaths and crime because in its absence, the rich and the influential were getting away while poor were becoming victims.

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 is a shocking reality.
The modern democratic states have monopoly of legal violence, symbolically, exercised in its internal aspect by police. In order to maintain peace, social order, preventing recurrence of crimes and to deal with criminals and other rowdy elements all the civilized nations have a legally constituted state force commonly known as police invested with enormous administrative powers.¹⁰

The police services are essentially, devoted and dedicated to the protection of life, liberty and property of citizens coupled with maintenance of peace and order and to that end, it has legally permissible powers to inflict deprivation of liberty and even cause physical injury to any person who commits or threatens to commit breach of peace and social order. In the administrative hierarchy of states the police occupies a strategic position entrusted with the solemn duty of enforcing law in its letter and spirit and is popularly harped as guardian of law and defender of basic rights of law abiding and peace loving citizens from external aggression and internal encroachment.¹¹

Originally, the word ‘police’ is derived from the Greek word ‘politia’ or its latin equivalent ‘politia’. The term ‘politia’ standards for the ‘state’ or ‘administration’.¹²

In Encyclopedia Britannica, the term police is used to denote “a body of people organized to maintain civil order and to investigate breaches of law.”¹³

According to Cambridge International Dictionary of English – the term ‘police’ means the official organization that is responsible for protecting people and property, making people obey the law, finding out and solving crime, and catching people who have committed a crime.”¹⁴

Thus ‘police’ means a branch of government which is charged with the preservation of public order and tranquility, the promotion of public health, safety, and morals and prevention, detection and punishment of crimes.

The ideal purpose of police in a community can be best described in the following words which spell out the duties of law enforcement officers as laid down in the International Code of Enforcement Ethics:

“As a law enforcement officer my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against the deception, the weak against
oppression or intimidation, and the peaceful against violence and disorder and to respect constitutional rights of all men to liberty, equality and justice.¹⁵

But in present scenario the question arises as to whether there was ever a time when the colour ‘khaki’ evoked respect among public? Is there a section of police that gets respect? The answers to these questions are not easy to find out. What is, however, certain is that the very mention brings to mind the image of cop waiting to peck around for personal gains.¹⁶

The term ‘Human Rights’ has not been defined in any Code, Statute, Declaration or Covenant of United Nations but after passing of the protection of Human Rights Act, 1993 in India the expression ‘human rights’ has been defined as rights relating to life, liberty, equality and dignity of the individual, guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India. The International Covenants included in the mandate are the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, adopted by the General Assembly of the United Nations on Dec. 16, 1966.¹⁷

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.

The police cannot violate human rights; rather they are legally bound to protect them. But it often happens that instead of implementing and protecting law police itself violates it, which undermines its image. Thus there is a direct and critical interrelationship and interdependence between policing and human rights. Police can be a positive or negative factor in securing the respect and ensuring protection of human rights, police is the part of sub-system which plays a crucial role in enforcement mechanism of any country.

What constitutes violation of human rights has been the subject of so many Conventions and Declarations aim at total banning of torture in all its forms. However, in spite of the commitments made to eliminate custodial crime specially
torture, the fact remains that custodial abuse is more widespread now then even before. “Custodial violence” is a naked violation of human rights. This adversely affects human dignity and destroys to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward.\(^8\)

It is perhaps one of the serious drawbacks of our Constitution that it does not expressly provides for a fundamental rights against torture.\(^9\) In fact, the Indian enactments are replete with instances of legislative suspicion on the integrity and efficiency of the police. During British rule, the Torture Commission was instituted to inquire into illegal and questionable methods used by the police during investigation and interrogation. Even before the presence of Indian Penal Code, 1860, Criminal Procedure Code, 1872 and Evidence Act, 1872 came into force, the earlier Police Act of 1861 contained provisions that barred confessions made to police officers in police custody (Sections 148, 149 and 150). Sections 330 and 331 of the Indian Penal Code, 1860 make it a punishable offence if hurt or grievous hurt is caused for extorting confession or any information which may lead to the detection of an offence or misconduct.” Section 25 and 26 of the Evidence Act, 1872 bar proof of confessions made to police officers or in police custody irrespective of whether they were voluntary or not. Such confessions are presumed to be coerced. In fact, James Fitzjames Stephen who was the draft man of the Evidence Act, 1872 stated that the background of these sections was the inefficiency and third degree methods by the Indian Police.\(^20\)

In *Queen Empresses vs. Babu Lal*\(^21\) commenting on the above provision, it was observed by the honourable Court that:

“The legislative had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and those malpractices went to the length of positive torture. Instead of working up to the confession, they work down from it.”

This practice adopted by the police personnel results in severe injuries, permanent disablement, rape of women in custody and ultimately death. The problem is universal in nature and is not confined to any particular nation. However, with India it magnifies beyond proportions due to poverty and illiteracy of its bulk of people.
Generally and more particularly with this class of people, the likelihood of human rights violation in police custody is more. There is no doubt that efforts have been made both at international level and national level to control the problem of torture of human beings in custody by police officers themselves. But these efforts lack proper enforcement. By means of the present study, an attempt has been made to discuss the history, nature, dimensions and international and national legal measures adopted for the prevention of custodial violence and with the help of empirical study of KAVAL Districts of U.P factual position is analysed and discussed. The study concludes that much more is needed to regulate and control the problem.

Review of 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 earlier studies on the subject 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 national laws like Constitution of India, Indian Penal Code, Criminal Procedure Code, Indian Evidence Act and also International instruments like Universal Declaration of Human Rights, 1948, 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 functioning of police has a direct bearing on human rights. The yardstick for judging the respect shown for human rights by the police is: whether the people in
general feel and accept the police as a protector of their rights, liberty and dignity of the person and property.\textsuperscript{22}

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 5\textsuperscript{th} report that the police continue to function as force against everyone – complainant, accused, witnesses and the public at large.\textsuperscript{23}

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.\textsuperscript{24}

Again in 1993\textsuperscript{25} 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:

\begin{itemize}
  \item Sadism in police
  \item Unrealistic public expectations about crime control.
  \item Failure of criminal justice system.
  \item Inadequacy of strength and resources in police.
  \item Inadequacy of laws.
  \item Lack of scientific temper and non-availability of facilities.
\end{itemize}

Following remedial measures were also suggested in the report:

\begin{itemize}
  \item Tightening recruitment standards.
  \item Improving training standards.
  \item Improving the machinery for enquiry into complaints.
  \item Improving supervisory and leadership standards.
  \item Review and implementation of reports submitted by commissions/committees.
\end{itemize}
► Review of laws.
► Payment of compensation

In 1994 James Vadakumchery 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.
► 86.67% 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 whom police have taken in its custody themselves²⁸.

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 Degrad ing 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 the 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 dimensions 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." 29

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 first hand 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 Supreme Court, High Court and National Human Right Commission have been discussed extensively.

Digests and reports of National Police Commission, N.H.R.C., Human Rights Rapporteur, Amnesty International Report, Asia Watch Report have also been taken into consideration for the purpose of study. The analysis of the case law enunciated by the High Court as well as Supreme Court and National Human Right Commission 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 deals 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 dimensions 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. The humble attempt has been made under this chapter depict the contrast at ground level between Human Rights in book and practice in police stations and prisons by obtaining feedback through questionnaire and interaction with victims, their family members, police personnel’s. The survey study also go to establish the kinds, modes of violence prevalent in police custody, factors responsible for such violence and reasons and lastly it was analysed and depicted with the help of graph.

The work ends with conclusion finally recapitulating the earlier discussion. This is followed by some suggestions which go a long way not only to improve legal regime but may pave the way to prevent frequent recurrence of custodial violence if not fully eradicated.
REFERENCES

1. Pooja Talwar, “A case study of custodial violence in Delhi” under the supervision of M. Mujtaba Khan 2008 for details see, www.google.co.in
4. 277 US 438.
6. Supra note 2
8. Supra note 3.
11. Ibid.
20. Ibid.
21. (1884) ILR 6 AIL. 509.


27. See, NHRC Report 2001-2010
