Chapter One

Custodial Crimes - Genesis
and Growth
CHAPTER – 1

CUSTODIAL CRIMES – GENESIS AND GROWTH

The history of crimes and criminals is as old as human civilization itself. They are systematic gradual products of social system in which every human being enjoys his/her rights, duties, privileges and claims. It is true that the ultimate destination of the criminals are neither their family nor isolation but the prison. However, it is also true that being criminals does not affect their status of human being they remain human being and enjoy certain basic rights. Whenever crime is committed in a civilized society, the wrongdoer is subjected to punishment according to the gravity of the offence and laws of the land.¹ But it is unfortunate that very often the protector of law, i.e. the police themselves violates the law and then start to inflict custodial violence on criminals, accused and detainees which often proves fatal to them in various ways. Custodial violence is a very broad term and it includes deaths, rape, torture, illegal arrest and detention, false implication, disappearance from police custody fake encounter and other police excess. The history of custodial violence has been the past and parcel of the history of mankind. In this chapter an attempt has been made here to trace out the genesis of the custodial violence in India. The historical retrospection of custodial violence has been divided under three heads, viz. Ancient India, Medieval India and Modern India, under these three heads, the position of criminals, accused and detainees in ancient times has been discussed.

Custodial Violence during ancient period

The practice of brutal behaviour against criminals and suspects by the law enforcement machinery was a common phenomenon in ancient India. However, in the first phase of ancient period in India “Dharma” was supreme. The idea and practice of “Dharma” was instrumental in the integration of various sections of the people irrespective of any distinction. The concept of Dharma has been all pervading, governing, ordering, regulating and directing human beings in their earthly and spiritual pursuits. It has been a liberating force helping man to attain freedom from bondage, indiscrimination and exploitation.² Maharishi Ved Vyas, while explaining his conception of virtue and sin pointed out the acid test for virtue is the sensitivity for the wellbeing of others whereas inflicting of pains to others is sin.³ These high ideals
of life and philosophy of sages and saints were well followed even in case of 
prisoners, criminals and accused in ancient period in India.

However, in the second phase of ancient period custodial violence was on peak. 
Tortures, rapes, deaths, illegal arrests, false implications and other police excesses 
were common incidents in ancient India. Very severe punishments for criminal were 
prescribed in various Hindu scriptures. In fact, the contemporary penology has its 
roots in ancient India.4 All the barbaric methods of torture such as cutting of tongue, 
pouring molten hot lead in the ears and throat cutting the limbs, whipping etc. were 
well known and were part of the law of the land.5

Torture and violence have been identified with the police in India ever since the Vedic 
age (2000 to 1400 B.C.).6 The Rigveda makes a specific mention of thieves (taya or 
sutayas) and robbers (taskars).7 These thieves and robbers were subjected to barbarous 
treatment by the hands of the representative of the king. In Vedic times, dogs were 
employed to chase thieves and criminals.8 The savagery of the ferocious dogs which 
were employed to chase criminals was a gruesome practice and a very cruel form of 
torture. In this period the ordeals of fire, water and single combat were used. During 
this period, punishment was considered to be a sort of expiation which removed 
impurities from the man of sinful prompting and reformed his character. The deterrent 
danda-niti punishment was considered important to control crimes in those days. 
Justice by various ordeals, such as, the ordeals of fire, water, poison and single 
combat etc. was delivered which were very harsh.9 It seemed that these ordeals and 
oaths were like magic and were only meant to frighten the parties in telling the truth. 
These were types of mental tortures inflicted upon the criminals.

During the epic period (1400-800 B.C.), torture was certainly practiced on prisoners 
by the police. Torture under the orders of the king was not uncommon.10

After the epic period, the next was the period of law and philosophy. Manu, 
Yajnavalkya, Brihaspati, Narada, Kautilya and Gautama were some of the important 
law givers. Torture and severe punishment during this age too was widely frequent 
phenomenon.11

According to Manu and Narada, eight sites would be selected for infliction, such as 
private parts, the abdomen, the tongue, the two hands, the two feet, the eyes, the nose
and two ears.\textsuperscript{12} Manu emphasized the necessity of torture to protect the society from the hands of criminals. He held that after considering the inclination of the offender and his antecedent’s capacity punishment should be given.\textsuperscript{13} He said that men who are guilty of crime and have been punished by the king go to heaven and become pure like those who perform meritorious deed.\textsuperscript{14} In Manusmriti, there were enough instances where harsh punishments were prescribed for the violators of the law. There was indeed much truth in the oft-repeated, prescription from Manu’s ‘Danda-niti’. Dread of the rod alone restrains the bad, controls the good, and makes a nation strong. The king must punish fearlessly, else the strong would oppress the weak.\textsuperscript{15}

Similarly, Narada referred the inhuman practice of pouring hot oil into the mouth, ears and thrusting red-hot iron into the mouth of a criminal sentenced to death.\textsuperscript{16} Kautilya observed that awarding of punishment must be regulated by consideration of nature of crime committed, time and place, strength, age, conduct earning and monetary position of the offender.\textsuperscript{17} He recommended eighteen kinds of torture to elicit information from the accused.\textsuperscript{18} Burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, cutting of limbs and mutilation were in practice. He held that if a person killed another intentionally he was to be put to death with torture.\textsuperscript{19} This means judges should always consider the relevant circumstances before deciding the actual punishment. Enumerating the evil consequences of the ill administered punishment Kautilya held that by not punishing those deserving to be punished and punishing those not deserving to be punished, by arresting those who ought not to be arrested and not arresting those who ought to be arrested the king produced disaffection among the subjects which ultimately led to the ruin of the kings.\textsuperscript{20}

However, in cases of harassment of prisoners, if anyone puts hindrance to sleep, sitting down, meals, answering calls of nature, or movement putting fetters (in judge’s lockup or in prison house) the fine should be three panas, increased by three panas for him to who did it and for him who causes it to be done successively.\textsuperscript{21}

Similarly, when the Superintendent of Jail puts any person in prison without declaring the grounds of detention, he should be fined 24 panas; when he subjects any person to unjust torture 48 panas; when he transfers a prisoner to another place different in station or deprives a prisoner of food and water, 96 panas; when he dormant or maims
a prisoner, he should be punished with the middlemost fine, who caused death to a prisoner, he should be fined 100 panas.

A person should not be put to torture whose offence is trifling or who was a minor, aged, sick, intoxicated instance, overcome by hunger, thirst, traveler, who has overcome, whose meal was undigested or who was weak. The person who violated under no circumstances, a pregnant woman or one who had not passed month after delivery should be put to torture. Those who violate or cause to violate the above rules should be punished with the first fine, also for causing death by torture. Those whose guilt was found to be probable, should be subjected to torture. Torture may be caused collectively, separately or repeatedly in the case of one who was a former offender, who after confession retracts, with whom a part of the stolen goods were found, who was arrested because of the act, or with the article, who attempts to seize the ruler's treasury or who was to be killed by torture at the ruler's order. Further when any person commits rape with a captive (pledge) or slave women in lock-up, he should be punished with the first amercement. When he committed rape with the wife of thief or of any other man who was dead in a riot he should be punished with middle most amercement, when he commits rape with an Aryan woman, in lock, he should be punished with the highest amercements, when prisoner commits rape with an Aryan women prisoner, he shall be condemned to death then and there; When an officer commits rape with an Aryan woman who had been arrested for untimely movement at night he should be hanged on the same spot; when a similar offence was committed with a slave the first amercement. Jail superintendent should be punished for his misdeeds. In the case of very grave offenders, there shall be nine strokes with a cane, twelve whip-lashes, two thigh encircling, twenty two slaps, two types of scorpion biting, two kinds of suspensions, sticking needle in the hand, burning one joint of a finger, making the accused drink rice gruel and then preventing him from passing urine, heating in the sun for a whole day after making him drink fat. Similarly, a condemned criminal was also burnt to death after having fastened him on a stake. Yajnaralkya recommended death sentence by burning. However, according to Yajnavalkya detection of crimes and arrest of the suspicious, protection of civil population and prevention of illegal acts were the basic functions of the police in ancient India. During ancient period persons with suspicious movements were occasionally menaced with torture by policemen. The latter exhibited enormous
cruelty to extort confession, which sometimes proved fatal.\textsuperscript{36}

Arrested culprits were taken into jail custody.\textsuperscript{37} In order to clear him of alleged guilt
bails were also granted.\textsuperscript{38} During this period, in the presence of the complainant and
the witnesses, the accused whether local or foreigner shall be questioned about his
country, caste, family, name, occupation, wealth, associates and residence.\textsuperscript{39} Answers
were compared with the statements of others.\textsuperscript{40} In case of corroboration by persons
proving his innocence, he was to be acquitted otherwise he was to be put to torture.\textsuperscript{41}
Generally male criminal feet were tied while putting in the prison. Iron fetters were
generally used to bind the feet of the culprit. Wooden handcuff was also known.
Many prisoners died as a result of the torture inflicted upon them and the privations
they endured.

They were left without food or water. Suffering from the cold or the heat, lying
helpless in their own excrement, usually sick, often leprous, their nails, hair and long
beard frame beaten three times a day with whip, canes or bludgeons,\textsuperscript{42} conditions of
jails and prisons during this period was deplorable. Dandin refers to one of the savage
ways of trampling to death of elephants. He also makes mention of death by ill-
treatment & torture.\textsuperscript{43} In his time, the policeman (also known as Rajpurusas,
Nagarikas or Raksins) at that time, patrolled the city at night, and guarded it against
the thieves and also detected other crimes.\textsuperscript{44} They were known for their rough
manners in handling people, and especially the suspects whom they subjected to
merciless beating in order to elicit information from them.\textsuperscript{45}

The offence of culprit and also the punishment meted out to him were announced in
public with the beating of the drum. The convict with his arms bound behind his back
was taken to the place of execution by the Raksin, or the candelas who thrice made
the proclamation of the offence and the punishment awarded.\textsuperscript{46}

The punishments were generally severe for offences, such as abetment of crime. The
offender was banished from the state or was put into prison and his property was
confiscated. The literature of ancient India provides ample references to prisons.
Prisons were generally located in an underground dungeon or in an out of the way
place and were properly walled.\textsuperscript{47} Some were bound hand and foot, or chained to a
wall, or thrown into ditch where they were at the mercy of wolves, and, jackals, rats,
cats, and soon meet their death. A prisoner might be stretched out on his neck his

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jaws wrenched open forcibly and kept part by the insertion of red hot iron or copper
wedges and urine poured down his throat. Other instrument of torture were employed,
cauldrons filled with burning and corrosive liquids, sharp swords, saws, razors, iron
nails, needles, hatchets and pincers. 48

Similarly, from the Harischarita it appears that the condition of the prisoners was far
from satisfactory. They bore haggard looks with long beards and their bodies looked
dark due to dirt. There is a reference where, Jailer kantaka on one occasion asked a
thief to restore his stealing to the citizens, failing which he would suffer the eighteen
kinds of torture one after another till death. 49

Torture to extort confession

Judged by modern standard, some of the punishments inflicted for serious crimes, in
ancient India, as in other countries of the ancient and medieval world, were brutal and
barbarous. Impaling, burning and mutilation are cruel punishments before which even
the bravest heart would quail. The victims of the law were often tortured in a most
cruel manner so as to strike terror in the heart of other evil-minded people. Now the
question arises whether torture was also used to elicit confession from under trial
prisoner or suspected persons. The canonical law books are silent on this point.
Kautilya, however, has devoted a whole chapter to “Trial and torture to elicit
confession.” From which we learn that cruel modes of torture were resorted in order
to extort confession. 50

When the answers of the accused are not attested by reliable witnesses he should be
subjected to torture. But it should not be applied in discriminatingly.” Those whose
guilt is believed to be true shall be subjected to torture.” Pregnant women, or who
have delivered a child within a month should not be tortured. Torture of women shall
be half of the prescribed standard.” Ascetics and Brahmans well-read in the Vedas
should not be tortured but subjected to surveillance and banished from the country.”
Moreover in the time of torturing an accused special care must be taken so that he is
not tortured to death.

If the accused do not confess his guilt each day a fresh kind of torture may be
employed. Kautilya then describes the various kinds of torture which were in use in
his days. There are four kinds of torture (Karma)- six punishments (Satdandah) severe
kind of whipping (Kasa), two kinds of suspension from above (Upari nibandhau), and water-tube (Udaka nalikachana). There are some persons who must not be subjected to torture. Ignoramuses, Youngsters, the aged, the afflicted, persons under intoxication, lunatics, person suffering from hunger, thirst or fatigue from journey. Person who has just taken more than enough meal, persons who have confessed of their own accord (atmakasitam) and persons who are weak shall not be subjected to torture.\textsuperscript{51}

As a practical politician Kautilya lays down minute rules and modes of torture to extort confession, it is not unreasonable to hold that such torture used to be resorted in ancient India.

The Buddhist period (B.C. 320-300 A.D.) was an age of great humanitarianism and the administration of justice had become correspondingly influenced by humanitarian ideals. Custodial torture in any form was strictly forbidden and special favours were given to prisoners-who happen to be women, aged or who had many dependants.\textsuperscript{52} During the Buddhist period (320 B.C. to 300 A.D.), the offenders were arrested and punished severely. The accused were tortured in the custody which usually resulted in their death. The bilanga-thalika or a 'gruel-pot' or 'porridge pot' or 'saucepan' was a torture in which the skull of the victim was first trepanned and then a red hot ball of iron was dropped in so that the brain boiled over like porridge. Similarly in hathpajotika or the 'flaming hand', the hand was made into touch with oil rages and set alight.\textsuperscript{53}

Although, Ashoka inherited from his forbears an efficient bureaucratic set up, the stress was on the observance of the law at piety which in its turn was expected to lead to proper justice and reduction in crimes. Similarly, the status of women prisoners was not satisfactory in this period. The records of ancient period were replete with incidents of abduction of rape, molestation and torture of women criminals by the custodian of laws\textsuperscript{54}. Even female prisoners had their feet tied and put in prison.\textsuperscript{55} Iron fetters were generally used to bind the feet of the culprit. Wooden handcuff was also known.\textsuperscript{56} It was only in the second phase of ancient period that rights of women criminals had been given much attention.

\textit{'Jus Talionis' not conspicuous in the Hindu Criminal law:}

\textit{'Jus Talionis' is a latin maxim which means that a punishment inflicted should
correspond in degree and kind to the offence of wrongdoer, as an eye for an eye. In other words it is a principle or law of retaliation that a person who has injured another person is penalized to a similar degree or according to other interpretation the victim receives the value of injury in compensation.

Sanskrit scholar Jolly Roger in his estimate of ancient Indian criminal law expresses the opinion that capital punishments in various aggravated forms, such as impaling on a stake, trampling to death by an elephant, burning, roasting, cutting to pieces, devouring by dogs and mutilations, are also frequently inflicted even for comparatively light offences. The 'jus talionsis' which is universally represented archaic legislation, becomes especially conspicuous in there punishments thus a criminal is condemned to lose whatever limb he has used in insulting or attacking another. Capital punishments in various aggravated forms are also frequently inflicted even for comparatively 'light offences' is a gross exaggeration of facts. It may be admitted that in Manu's time the number of capital offences was comparatively large though still it was less numerous than in medieval England or medieval Europe but we find that it has been greatly reduced by the time of Yajnavalkya and Kautilya. So an attempt was made to humanise criminal law with the progress of civilization is clearly traceable in India law. In the later period capital offences do not exceed from twenty five. The number is significant it compared with that of England in eighteenth century. In 1797 in England the number of capital offences, without benefit of clergy was 160, and it rose to 222, but with the efforts of Sir S. Romilly pocket picking, which was capital offence was removed from the order of the list of capital offences.

Nature of punishment in ancient time was cruel and brutal but they were no more barbarous than those of other ancient and medieval states. In South of Germany for instance forms of punishment like branding, cutting off the hand, ears, the tongue, putting out of the eyes were very common phenomena. The modes of death varied between breaking on the wheel, a quartering in the crudest manner, pinching with red hot tongs, burying alive and burning. The conditions in medieval France were not better for undoubtedly the most common punishment was death. It was used for almost all serious crimes, with remarkable prodigality. The methods of putting to death varied; in general, they hanged the man and burned or buried alive the women.
But this distinction was customary only, not mandatory; there are instances of men being buried alive for the crime of theft, and men being burned for rape or bestiality. Counterfeiters were thrown into boiling water. In certain special heinous cases, the death penalty was preceded by an humiliating torture or even a mutilation; thus often for abduction, and for all the worst crimes, notably that of 'less majeste', the offender was dragged around the locality before being hanged.\[^{61}\]

Lastly we come to the conclusion that justitio\textsuperscript{is}, which is universally represented in archaic legislations is conspicuous in the punishment of ancient Hindus. It is true in some special case of assault or hurt the offender is condemned to lose the offending limb, but that was not the general or common punishment for assault or hurt. Moreover, when mutilation has been prescribed for some other offence, it is not necessarily of the offending limb and the motive for inflicting such punishment is not to satisfy the vindictiveness of the aggrieved party but to deter people from the commission of such heinous crimes.

**Custodial Violence during medieval period**

The study of the history of India reveals that the glorious Hindu period was subjected to intermittent invasions by the Muslims. The beginning was made by Mohammad Bin Qasim in 712 A.D. With the rise of Babar and fall of last Lodhi ruler in 1526; the administrative set-up by the Muslims begins to take shape on the Indian soil. With the advent of the Muslims, critical phase of Indian history begins. Before going into the details of this phase it seems appropriate to mention the provisions given in Holy Quran on this issue.

Islam greatly encourages peace, love, kindness and compassion. The Holy Quran gives especial emphasis on these traits. It explains the reason of the creation of different races. Consider the following verses from the Holy Quran.

"O mankind! We created you from a male and female and made you into nations & tribes that you may know and honour each other (not that you should despise one another). Indeed the most honourable of you in the sight of God is the most righteous". (Chapter 49, verse 16) \[^{62}\] The Holy Quran in this verse does not only tell that the racism is not allowed but it also tells that all human beings are equal in the eye of Almighty. Islam prefers impartiality (Chapter 60, verse 8).\[^{63}\]
See the verse of the Holy Quran, which is mentioned as follows.

"Be quick in the race for forgiveness from your Lord, and for garden (Paradise) whose width is that of the heavens and of the earth, prepared for the righteous". Thus it is the duty of an 'Islamic Order' to create such an atmosphere within the society, in which an individual considers each of his basic rights and each of his means of living perfectly safe in such a manner that he may not have the least anxiety or fear about it. Creation of such an atmosphere is the necessary result of the Quranic Social Order. The Holy Quran says that "On them there shall be no external fear nor shall they have any internal grief." (Chapter 2 verse 38).

The Holy Quran proposes corporal punishment. It does not send the thief to prison, in which case the offender himself goes on getting his food and clothing’s but his wife and children die of hunger i.e. members of his household suffer instead of him. As a matter of fact, the fear, which can cause the habitual offenders to mend their ways, or which can keep the potential offenders away from committing a crime, can only be aroused by corporal punishment. Thus Holy Quran prevents torture to innocent and punishes guilty person.

Quran says that feed with food the needy wrath, the orphan and the prisoner, for love of him (Chapter 76 verse 8). On a particular journey, it is said, some of the companions of Prophet Mohammad (PBUH) were accompanied by prisoners, and these prisoners themselves relate that the party ran short of provisions at a certain stage. The companions, therefore, decided that they would feed the prisoners upon the remaining store of dates and would themselves subsist upon date stones. It is related that there were not even enough dates to go round. It will be recognized that this injunction of Islam is very equitable and humane.

Marriage should be arrange for prisoners

The Holy Qur’an also prescribes that marriage should be arranged for such of the prisoners as have arrived at, at the age of matrimony:

Marry those among you who are single and those who are fit among your male prisoners and your female prisoners (chapter 24 verse 33).

It says that the punishment for a crime should be proportionate to the nature of the crime, not more and that too, in case where there is no chance of the offender’s
correction. It provides a permanent guidance, not to have an adverse opinion about the accused. (Chapter 42 verse 40)\textsuperscript{68}

If crime has been committed prior to promulgation of law declaring it as such it should not be considered a crime. In other words the application of a law cannot be made retrospectively; this shall be applicable only after its enforcement. Regarding many such injunctions the Quran has said; (Chapter 4 verse 22).\textsuperscript{69}

"Except what has foregone" i.e., what happened before the enforcement of law, shall not be accountable. An act not committed willfully shall not be considered cognizable. It is said in Surah Ahzaab (Chapter 33 verse 5).\textsuperscript{70}

There is no blame on you if you make a mistake there in: (what counts) is the intention of your hearts. But carelessness (inattention) is also a crime in itself and punishable, that is why the Quran has also prescribed punishment in case of murder by mistake; although it is not as severe as for premeditated murder; rather it is by way of atonement.

Some small mistakes on the part of people who always avoid big crimes are pardonable. In Surah Al-Najm it is said: for those who avoid major sins and shameful deeds, falling into small errors, is pardonable. (Chapter 53 verse 32).\textsuperscript{71}

The kind of social order that the, Quran establishes, and the way in which its individuals are brought up, it expects of them to come forward voluntarily and accept their slips if ever they occur, and to tell the truth, even if it goes against themselves (Chapter 4 verse 135).\textsuperscript{72} In this verse, the Holy Quran has presented such a notable principle regarding evidence, in the presence of which there remains no difficulty in the administration of justice. Thus Islam teaches lesson of humanity but the practice is different and it causes torture and pain to the accused.

The legal system in medieval India resembles with the ancient India. During the Mughal regime in India, the Muslim law of crime was the law of the land for the administration of criminal justice.\textsuperscript{73}

According to Muslim law, there were two categories of crime. The first, includes crime of human and private nature and secondly, theft brigandage, extra – marital sexual relations, apostasy and wine drinking.\textsuperscript{74} Similarly, in Muslim law, punishments for these offences were divided into Hadd, Quisas, Diya and Tazir. Quisas or
retaliation meant in principle for tooth and eye for an eye with certain exception. Diya or Diyut meant blood money. In certain cases, like intentional injuries, Diya was awarded to the victim on fixed scale. Hadd was a punishment for offences both of which (punishment and offences) were equally defined. If a man was guilty of adultery, he was stoned to death or put to death in an ordinary manner. If he was guilty of fornication, the punishment was scouring (one hundred stripes).

In fact, the hadd punishments, were severe, they may appear to us today even as barbarous. Some of the hadd punishments were amputation of limb or limbs, flogging etc. The main aim underlying these punishments was to deter criminals from committing those crimes which were injurious to the community of creatures. Tazir was light punishment for offences against individuals and sometimes even against the State. It looks the form of public reprimand, the dragging of the offender to the door of the court exposing him to public scorn, imprisonment or exile or boxing on the ear or scourging. For inflicting the punishment under Tazir, the rank and status of the offender were taken into account. Tazir, could be inflicted on a confession, evidence of two persons or even on strong presumption. The sovereign could regulate the whole of this part of criminal law being discretionary.

Thus during this period, the sovereign and the law enforcement agency had acted arbitrarily and discretionary, while conducting investigations of crime Tazir, which was one of the major forms of punishment during this regime, was a clear evidence of sovereign's independent attitude. Imprisonment was a very common form of punishment in Mughal India. There were no specific rules fixed for it. These were much hard for the majority of prisoners. The main features of these punishments were that no period was fixed for it. The Quazi and Magistrate had a right to send anyone to prison for the offence or crime for which the punishment could be awarded and the accused had to show the sign of repentance to secure his freedom. It was Abdul Fazal, one of the learned ministers of Akbar, who gave an interpretation that the Muslim rulers could award punishment to offenders.

For the purpose of awarding punishment of imprisonment numbers of forts were used to confine offenders. However, there was no regular jail in the modern sense of the term during the Muslim period in India. Generally forts were treated to be prisons during that regime. They used three noble prisons of castles in Mughal India. One
was at Gwalior, second at Ranthambore, and the third at Rohtas. Criminals
condemned to death punishment were usually sent to the fort of Ranthambore. They
met their death two months after their arrival there. The Governor then bringing them
to the top of the wall and give them a dish of milk to drink and then he was caste
down thence on the rocks. There are ample references where ordinary criminals
were kept under guard in irons but not in prison. Princes sentenced to imprisonment
were sent to the jail at Gwalior, where they rot nobles that offend. Those nobles were
sent to Rohtas prison who were condemned to perpetual imprisonment and after
completion of imprisonment they return to their home. It was also found that solitary
confinement was common in medieval India.

However, the account recorded by European Travellers, as well as the scattered case
in the chronicles, shows that during Mughal period there was no proper arrangements
for keeping criminal justice system the system worked remarkably well in the regime
of Akbar the Great. Akbar was inspired by the high ideal of doing even handed
justice to the people. He brought a basic change in the Mughal administration. He
adopted a policy of tolerance and non-discrimination towards, all human beings and
saw that no injustice is committed in his realm. The greatest of monarchs in his
time, Akbar has surely of a very high place among the rulers of mankind for his
brilliant success in the great adventure of governing men. He tried to prohibit harsh
treatment of prisoners. Jahangir, further followed the policy of his father Akbar. He
abolished the punishment of cutting nose and ears. Further during his regime the
procedure of the courts was simple and summary. No sooner were the accused
apprehended than they were produced before the court. It was seldom that a man had
to wait for more than twenty-four hours for his trial. It was Jahangir who interdicted
the cutting of noses and ears, but he left other forms of amputation untouched. During
his reign, he never disgraced himself by inflicting the penalty of flying, but he
occasionally punished the darker social and political crimes with dreadful death by
impaling, strangling, tearing by wild beasts or trampling by elephants.

Further, Jahangir, was followed by Shahjahan, who himself spend his last eight years
at a captivity of his son in the fort of Agra. At the time of Shajahan, the offenders
could not get the generosity from the administration and any reform in prison
administration. Shahjahan's rule was taken over by his son Aurangzeb (1658-1707),
the last of the great Mughal, emperors of India. For temporary confinement, there were police lock-ups in the cities termed as Chabutra-i-Kotwali. There are frequent references, in the news tellers of Aurangzeb about the confinement of thieves, robbers and even guilty officers in these lock-ups. The officer-in-charge of the chabutra-i-Kotwali used to be Mushrif. There was a reference in newsletter to the death of Bahadur Singh, Mushrif of Chabutra-i-Kotwali in November, 1693. These chabutra-i-Kotwali's have resemblance with the police lock-ups in the present system, where the accused persons are kept, for being produced before the Magistrate.

However, during the reign of Aurangzeb, arbitrary arrest and detention were less in numbers. On various occasion, he issued orders to Gazis that no one should be put to custody except of legal grounds (Waja-i-sharai), and that the Kotwal should not arrest any man except for theft, breach of peace and riot. The emperor issued orders in 1672 for the speedy trial of the prisoners once every month, to release innocent and to issue directions for the quick trials of others. If any man was sent by the Gazi for detention, the Kotwal has to take a signed order from the former. If any date was fixed by the Gazi for trial, the prisoner was to be sent to the adalat on the particular date, otherwise, the offender was to be sent to the court everyday. It meant that during that regime there were adequate safeguards to prevent custodial violence.

However, according to Sir Jadunath Sarkar, the Kotwals and Quazis of Mughal days were notoriously corrupt and torture to extort confession was wide-spread and common.

Custodial Violence during modern India

After the collapse of the Mughal Empire, the Britishers established their kingdom. Britishers showed great interest and enthusiasm in improving the Indian legal system on the basis of English legal system. But even during their regime, the severe and barbarous treatments of punishments were not uncommon. There are many instances, where the inhabitants in police custody received harsh treatment on many occasions. The policy of British administration in India was based on coercion. They maltreated the masses, denied civil liberties, discriminated and tortured them in many ways, in their own country. During that reign in India, there was no fundamental law guaranteeing the subjects rights and liberties. The rights of persons in custody were apprehended on many occasions. History of freedom movement in India provides
glaring epitomes of torture, which Indians met under British rule during 1857-1947.

During the British rule in India, custodial violence was considered legitimate to maintain kingship and sustain the domination. Human rights phenomenon was like a curse for the police officers because their prime concern was to protect British rulers. History shows that custodial violence; including tortures, illegal detentions, rapes, and deaths in Police custody was the rule of law in colonial’s reign. Criminals and suspects were humiliated and subjected to custodial violence. With the passage of time, the administrative structure of Britishers in India began to assume a new form. Various major alterations were made in the exiting legal system. In the year 1790, the punishment of mutilation was forbidden by law in Bengal, and criminal courts were directed to inflict imprisonment with hard labour in its stead. In 1833, attention of the British parliament was drawn to the anomalous and sometimes conflicting judicatures by which laws were hitherto being administered. Accordingly in that year an Act was passed which effected many changes in the constitution set-up of this country. An Indian Law Commission was appointed to prepare a uniform code of legal rules. In 1858, the Royal Proclamation was issued, where forth direct responsibility was assumed by the British Crown. The frequent report of brutality in lock-ups, rapes and death in custody and widespread corruption against the policeman compelled the government of the day to bring about certain changes in the law existing at that time. In the next three years, first the Civil Procedure Code, then Indian Penal Code and almost afterward the Criminal procedure Code was enacted. The Indian Penal Code was enacted in 1860; the Indian Police Act in 1861; the Indian Evidence Act in 1872 and Criminal Procedure Code, 1973 one by one came into force.

Britishers through these legislation’s prohibited illegal detention by a public authority. Further, they also tried to prohibit inflicting simple injury during custody for obtaining information or confession and also prohibited inflicting grievous hurt during police interrogation, to inform the world community that they are against detention and torture.

But from 1903 till 1947 when India achieved independence, the British set the police machinery as status quo so as to suit their imperialist needs with the transaction of India from slave country to an independent, socialist democratic and welfare state. The style of police handling the offenders remained same as it was during the colonial
period. In fact, the agencies that performed policing functions in pre-independence of India could hardly be expected to be democratic and service-oriented in nature. After the Second World War regular attention has been paid to the rights of an individual. Many International Conventions and Declaration have been adopted by U.N. General Assembly which talks about the prohibiting of brutal practice of custodial violence, by the law enforcement agencies.

Among the Declaration and Conventions adopted by U.N. General Assembly, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, is the most important Convention which prohibits practices of custodial crimes and torture. This Convention enjoins upon all member states to take effective measures to prevent acts of torture. Acts of torture cannot be justified even in the exceptional cases.

Frankly speaking, this Convention globalizes the prohibition against custodial violence and makes it the concern of all nations of the world. India is also the signatory of this Convention. In India to prevent custodial violence there are many Constitutional, penal and legal safeguards available.

The adoption of the Constitution brought a ray of hope for the victims of police torture. The judiciary in India played a very significant role to prevent 'custodial violence' by enlarging the scope of Article 21 of the Indian Constitution. Apart from it, the democratic principles incorporated in the Constitution changed the prime duty of the police personals. But, it is unfortunate, that despite of protecting the interest of public, police force bore stigma, for being violator of human rights.

It is crystal clear from the apparent study that very harsh punishments were prescribed for the criminals and suspects from the time immemorial. In ancient Hindu period, the king was regarded as the fountain of justice and in case of any crimes he had the power to punish the guilty. The prisoners, criminals and suspects were wholly at the mercy of the king. There were no legal procedures in various cases and summary justice by king seemed to have been the ordinary course. Very often the criminals were first of all be laboured by the people themselves and then dragged before the king for punishment. During medieval period especially in pre-Mughal period the justice was made less intricate. There was no place for individual's liberty; severe punishments were inflicted on them. Criminals were subject to different kinds of
torture. The conditions of prison and prisoners were deplorable. In fact during medieval period punishments were inflicted on the offenders to deter others to commit the same crime or offence.

However, it was due to the freedom movement in India led by the Indians that Britishers for the first time, thought about the growing evil practice of custodial violence. Therefore, it is the right time for all human right activist and common man to join hands to fight against menace of custodial violence and hold governments accountable. Civilized society cannot be built with broken hands. Tortures thrive on the indifference of the general public.
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