Chapter Two

Custodial Violence: Nature and Dimensions
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CUSTODIAL VIOLENCE: NATURE AND DIMENSIONS

"Injustice" anywhere is threat to justice everywhere"

Martin Luther King’ Jr.

The practice of violence has been widespread and predominant in India since time immemorial. It is as old as human being. Now a day it has become a ‘normal' and ‘legitimate’ practice all over the world. In the name of investigating crimes, extracting confessions and punishing individual violence is inflicted not upon the accused, but also on bonafide petitioner’s complainants and informants by the police officers. Custodial violence is cruel, inhuman and degrading treatment, grossly derogatory to the dignity of the human being. Violence is also inflicted on the women and girls in the form of custodial rape, molestation and other forms of sexual harassment.

Custodial violence is anathema in every civilized society. Nature of custodial violence is so grave that now a day it has become a matter of grave common concern and it is aggravated by the fact that it is committed by persons who are supposed to be protector of the citizens in society. It is strange and astonishing that custodial violence are always committed under the shield of uniform and within the four walls of a police station or lock-up where the victim being totally helpless. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is now affecting the credibility of the rule of law and the administration of criminal justice system in India and world. Undoubtedly, custodial violence is grave nature offence where hundreds of people taken into custody everyday are beaten up black & blue and tortured mercilessly often resulting in grievous injuries leading to death. Custodial torture is universally recognized as cruelest forms of human rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (N.H.R.C.) and the United Nations forbid it but the Police across the country defy these instructions. For instance, the recent cases of custodial killing reported from the state of Gujarat shows a consistent and alarming pattern of tolerance of the use of torture by the government and promotion of it as if it is an
essential element of law enforcement and investigation of crime. In Gujarat, the interrogation centers — often torture chambers of the state police have been functioning in full public view. The suspects are brought in, kept in illegal detention and tortured as part of questioning and later killed and declared as killed in encounter. This procedure is filthy and shameful yet no one dares to challenge it. Officers, right from the top to the bottom are involved in this process.

Dimension of custodial violence is so broad and diverse that includes police custody, judicial custody, handcuffing arrest, encounter, custodial torture, custodial death and custodial rape. Any form of torture or cruel, inhuman or degrading treatment, whether it occurs during investigation, interrogation or otherwise, need the severest condemnation. Today's police stations and prisons have become synonymous with assault and torture cells.

Adriana P. Bartow’s statement as given below can be cited in order to show the grave nature of custodial offence:

"Torture is wound in the soul so painful that sometimes you can almost touch it, but is also intangible that there is no way to heal it. Torture is anguish squeezing in your chest cold as ice and heavy as a stone, paralysing as sleep and dark as abyss. Torture is despair and fear and rage hate. It is a desire to kill and destroy including yourself."

Custodial violence is ranging from torture of various types to death by the police for extortion of confessions & imputation of evidence. This method of investigation and detection of crime not only disregards human rights of an individual and thereby undermines his dignity but also subjected him to unwarranted violence and torture by those who are deemed to be protector of law and society. In India where rule of law is inherent in each and every action and right to life and liberty is prized fundamental right adoring highest place amongst all important fundamental rights, instances of torture and "using third degree methods upon suspects during illegal detention and police remand casts a slur on the system of administration. Human rights take a back seat in this depressing scenario. Torture in custody is at present treated as an inevitable part of investigation. Investigators retain the wrong belief that if enough pressure is applied then the accused will confess. The former Supreme Court Judge, V.R. Krishna Iyer, has said that "custodial violence is worse than terrorism because the authority of the state is behind it"
Thus custodial crime and abuse of police power is not only peculiar to this country, but it is widespread. It has been a concern of international community because the problem is universal and challenge is global. Custodial crimes are perhaps one of the worst crimes in a civilized society governed by the rule of law. After discussing the historical aspect and its nature at this juncture it will be appropriate to determine all the terms related to custodial violence. Meaning and definition of certain expressions, which are relevant in order to understand the ambit and dimension of custodial violence, will be discussed in detail. After that kinds of custodial violence, categories and factors responsible for custodial crimes will be discuss.

**Custodial Violence: Conceptual Analysis**

Violence is general terms referring to all types of behaviour, either threatened or actual, that results in or are intended to result in the damage or destruction of property or the injury or death of an individual. In legal parlance it means "all types of illegal behaviour, either threatened or actual, that result in the damage or destruction of property or in the injury or death of an individual".4

However the expression custodial violence means and includes any act or conduct of any lawful authority which affects human dignity in any respect. All forms of police atrocity and brutality directed against persons in their custody fall within the ambit of custodial violence. Thus custodial violence is defined as a crime occurring during the period when some limitation is placed upon the liberty of the person, whether the limitation imposed by the police is direct or indirect. Clearly this means that it is immaterial whether or not the death occurs within the premises of the Police Station or Chowki. What matters is control of police over the victims. Police custody thus means placement of the victim with police during any action which results in loss of freedom of movement of the victim. Even the very fact of submission to an interrogation by the police would amount to custody.5

**Handcuffing**

According to Concise Oxford Dictionary6 the world "handcuff" means a pair of lockable linked metal rings for securing prisoners wrist. As par the Law dictionary meaning7, the expression "handcuff" means two metal rings joined together which are locked round the wrist of someone who is being arrested.
The Encyclopedia Britannica\textsuperscript{8} also states that handcuffs and fetters are instruments for securing the hands or feet of the prisoners under arrest or as a means of punishment.

Section-49 of the Code of Criminal Procedure,\textsuperscript{9} 1973 states that the person arrested not be subjected to more restraint than is necessary to prevent his escape. At present, India has one of the most progressive and humane handcuffing regimes in the world. According to the Supreme Court the use of restraints should be limited, procedurally safeguarded, and closely supervised by the Judiciary. The use of handcuffs is the exception, not rule unfortunately recently there has been tremendous pressure by the Police to make handcuffing mandatory. On 10 July 2002, the Bureau of Police Research and Development (BPR&D), in collaboration with the institute of social sciences, organized a seminar titled "use of handcuffing: A Rational Approach". The seminar, attended mostly by Police representatives from across India, provided an opportunity for the participants to discuss the guidelines for handcuffing. An overwhelming majority of them advocated legal reform to make handcuffing mandatory\textsuperscript{10}.

As the police argue, restraints are sometimes necessary for legitimate security reasons. Generally police work is dangerous, and a small minority of arrestee and detainees are desperate and violent in India. Handcuffing is used, both publicly and privately to humiliate, debase and intimidate arrestees and detainees.\textsuperscript{11} Supreme Court in Citizen for Democracy vs. The State of Assam\textsuperscript{12} has taken judicial notice regarding handcuffing of prisoners and held that handcuffing and chaining in public degrades and put to shame finer sensibilities and is a slur on our culture. Handcuffing should be shunned as a violation of human dignity within and without prison. The Court further observed that it is pity that the authorities have miserably failed to follow the law laid down by it in the matter of handcuffing of prisoners. The judgment further states that where the police or the jail authorities have well grounded basis for drawing a strong inference that a particular prisoners is likely to jump jail or break out of the custody then the said prisoner produced before the Magistrate concerned & prayer for permission to handcuff the prisoners may be obtained. The Magistrate may grant the said permission after ascertaining and coming to the conclusion that the said prisoner cannot be put under control unless handcuffed. The Supreme Court emphasized that
its order must be obeyed by all ranks of police and the prison authorities meticulously and any violation of the directions shall be summarily punishable under the contempt of Court Act apart from other penal consequences under the law. The Juvenile Justice Act, 2000 is the only law in India which debar juvenile prisoners to be handcuffed at the time of arrest or in transit from the home, the place of detention to the Court and back.

This verdict of the Supreme Court is not new as in the past also it has passed orders and laid down the rule with regard to putting of handcuffs and fetters on prisoners. Thus the fettered or handcuffed person may be an under-trial, political agitator, anti-social element or a convict being transferred from one prison to the other or in hospitals. In a recent incident\(^{13}\) in Punjab, justice A.S. Bains, a former Haryana High Court Judge, was arrested by the police and repeatedly placed in restraints even though there was no danger that he would attempt escape. Justice Bains filed a case and was awarded Rs. 5,00,000 as compensation. In this case High Court held that his handcuffing and illegal detention was definitely a violation of fundamental rights guaranteed by the Constitution of India.

The Supreme Court of India has repeatedly condemned the unnecessary use of handcuffs by the police as a violation of the right to personal liberty guaranteed by the Article 21 of the Constitution of India. The landmark decision of Supreme Court on handcuffing is *Prem Shankar Shukla vs. Delhi Administration*\(^{14}\). In this case, the validity of certain clauses of the Punjab Police Rules, which made handcuffing mandatory during arrest, was challenged and Hon’ble Court has laid down strict procedural guidelines specifying both and when and how the use of handcuffs is appropriate. According to the Court handcuffing is legal only if the arrestee is.

(a) Involved in serious non-bailable offences, and.

(b) Previously convicted of a crime, of desperate character, likely to commit suicide or likely to attempt to escape. The use of handcuffs and the reasons for their use must be recorded. It is illegal to walk fettered political prisoners through the strict. Furthermore, the police must take judicial permission before they use restraints during an arrest or on a detainee.

(c) The minimum freedom of movement, under which a detainee is entitled to
under Article-19, cannot be cut down by the application of handcuffs.

(d) Handcuffing must be a last refuge as there are other ways for ensuring security.

However the Apex Court in the same case laid down that accused can be handcuffed in the following circumstances which are as under:

(a) Person accused of non-bailable offence punishable with any sentence exceeding term of 3 years imprisonment.

(b) Person accused of an offence punishable under Sections 148 or 226 of the Indian Penal Code.

(c) Person accused of or previously convicted of such an offence as to bring the case under Section 75 of the Indian Penal Code.

(d) Desperate character.

(e) People who are violent, disorderly, or obstructive or acting in a manner calculated to provoke popular demonstration.

(f) Person who are likely to attempt to escape or on to commit suicide to be the object of an attempt to rescue.

The rule shall apply whether the prisoners are escorted by road or in a vehicle. Again with regard to duty of Superior Officer of Police the Apex Court further said that instruction given by this Court must be obeyed from D.G. of Police to Escort Constable and from I.G. of prisons to Jail Wardens. The Duty Officer at the police station must ensure that an accused when brought to the police station or dispatched, the fact where he was handcuffed should be clearly mentioned along with reasons for handcuffing in the relevant diary of the police station. Disciplinary action should be taken against the Supervisory Officers at various levels who are duty bound to see that the instructions of the Supreme Court are strictly complied with.

The imperatives of humane dispensation of all, including the accused person, under the law is unexceptionable. The urge for dignified and humane approach to issue like handcuffing can be aptly summarized by the words of Felix Frank further:

*The history of liberty has largely been the history of observance of procedural Safeguard.*
The Supreme Court of India in *Altemash Rein vs. Union of India* laid down guidelines as to the circumstances in which handcuffing of the accused should be resorted to. In this case a writ petition was filed regarding alleged handcuffing by a practicing advocate, Altemesh Rein was arrested by police and handcuffed with iron chain contrary to law, while he was being taken to the Court on the charge of a criminal offence. It was alleged that the Union Government and the Delhi Administration had not issued necessary instructions to the police authorities with regard to the circumstances in which a accused could be handcuffed. In the same case Hon’ble Court Issued guidelines as to the circumstances in which handcuffing of the accused should be resorted which are as under:

1. Handcuffs should not be used in routine.
2. Handcuffs are to be used only where the person is
   a. Desperate;
   b. Rowdy, violent, disorderly, obstructive or is likely to attempt to escape or commit suicide.

The Hon’ble Court further said there should ordinarily be no occasion to handcuff a person occupying a good social position in public life or professionals like jurists, advocates, doctors, writers, educationalists and well known journalists. Political prisoners, if handcuffed, should not be walked through streets.

The human rights-conscious Court rammed up its opinion of handcuffing in *Sunil Batra (II) vs. Delhi Administration*. To fetter prisoners in irons is an inhumane and unjustified, save where safe custody is otherwise impossible. The routine resort to handcuffs and irons bespeaks a barbarity hostile to our goal of human dignity and social justice. Despite these clear, specific and unambiguous judgments by Supreme Court the abuse of handcuffing is continuing.

In the contemporary enlightened world handcuffing or fettering is considered inhuman and protested all around the world. In Indian context law is seen specially, with regard to male convicts. Means they shall be handcuffed during transition when there is reasonable apprehension that he may attempt to escape. Female and juveniles are exempted from the said rule with regard to arrested prisoners and under trial being taken to a magistrate and shall not be subjected to more restraint than it is necessary
to prevent escaping.

In India Prisoners Act, 1894 deals with the confinement in iron. According to Section 58 no prisoner shall be shackled by the Jailor except in case of urgent necessity with a notice to the Superintendent but in the case of Kadar Pehariya vs. State of Bihar Supreme Court has specified that an under trial cannot be kept in fetters in a jail and handcuffing can be used in gravest of situations only. Further the Apex Court observed that the insurance against escape does not compulsorily require handcuffing. There are other measures where by an escort can keep safe custody of a detainee without the indignity and cruelty implicit in handcuffs or other iron contraptions. The use of iron is animalizing the person on whom it is used and since there are other ways of ensuring security it can be laid down as a rule that handcuffs and fetters shall not be forced on the person of an under trial. Similarly in Hira Lal Mallah vs. State of Bihar the Supreme Court held that the arrest of the person does not take away his fundamental right and only his movement is restricted on being arrested and it had further held that handcuffing of under trials in transit for non-availability of Constables is not permissible under the law, as a preventive measure by the Police authorities and the jail authorities. It is violation of Articles 14, 19 and 21 of the Indian Constitution. Again in a case of State of Maharashtra vs. R.K.S. Pati Apex Court directed the State of Maharashtra to pay Rs. 10,000 to the under trial prisoner, who was paraded in the streets handcuffed. Similarly in Sunil Gupta vs. State of Maharashtra the Supreme Court held that the escorting authority should record contemporaneously the reasons for handcuffing an under trial prisoner even in extreme cases and intimate the Court, so that the Court may consider the circumstances and issue necessary directions to the escort party. Again in a newspaper The Hindu national daily published a news about handcuffing captioned handcuffing is gross violation of human rights where under it was reported that Chairman and Director of Chitra Publications Pvt. Ltd. Mr. B.V. Seetaram was handcuffed by the police. He was brought in handcuff, tied to a chain held by he policeman from the District Government Hospital to the District Court complex.

It is crystal clear from the series of decision of Supreme Court herein before referred that handcuffing is violation of basic human rights of the accused and it may be resorted to only in the exceptional cases warranted by law and guidelines laid down
by the Hon’ble Supreme Court. Despite ruling of the Court handcuffing is frequently common and reported in media, print media and Supreme Court directives are rarely followed by the police officials.

International human rights law also restricts the use of handcuffs. Many International Human Rights Instruments contain provisions dealing two interrelated rights-the right to be free from torture and other cruel, inhuman or degrading treatment and the right to be properly detained. These rights are fundamental and are closely linked to the concept of human dignity which is one of the central concepts in International human rights law. Handcuffing for the purpose of humiliating or intimidating individuals violates numerous International Conventions.

Article 3 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to life, liberty and security of person.

Further Article 5 of UDHR makes provision that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Similarly Article 7 of International Convention on Civil and Political Rights (ICCPR) provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. These provisions of the International Convention together seeks to prevent handcuffing of the accused in ordinary course of circumstances being in violation of personal liberty of an accused person.

The concept enshrined in International Covenants have been endorsed and applied by the European Court in Raninen vs. Finland. In this case the question was raised that whether handcuffing violates Article 3 and 5 of UDHR which mirror Article 7 of ICCPR. The Court held that although “handcuffing did not normally give rise to an issue under articles. If the use of handcuffs was unjustified and imposed in the context of unlawful arrest visible to the public aimed at degrading or humiliating. It may be considered degrading treatment and thus violates Article 3. Therefore, the use of handcuffs by the law enforcing authority to humiliate arrestee in public clearly constitutes “degrading treatment” as defined by the European Court.

To summarise, both the Indian Supreme Court and International law have recognized that the abuse of handcuff is illegal and inhumane. It is not acceptable to use restraints to humiliate, debase, intimidate or punish an arrestee or detainee. In order to prevent
these illegal acts, it is absolutely essential that the Government implement the procedural safeguards and limits laid down by the Supreme Court. The police force must be educated to respect human rights and trained in proper arrest and detention procedures.

*Torture*

Torture is another coercive universal phenomenon which has been practiced since time immemorial in violation of all civilized norms of behaviour. Its real age is few centuries. Torture means “human torture”. The word torture usually denotes intense referring physical, mental and psychological aimed at forcing someone to do or say something against his or her will. It means breaking down under severe pain and extreme psychological pressure. In common parlance now a day in India, torture means human torture by police which is a universal phenomenon. The suspect is detained in some isolated place beyond the reach of family, friends and legal assistance and interrogators control everything, even life. For obvious reasons, torture is not called torture by those who practice it. It goes under the names of “sustained interrogation”, “questioning” or “examining”, whatever the name, brutalization is the result always.

According to Oxford Dictionary torture means inflicting of severe bodily and mental pain or suffering e.g. punishment. According to Chamber Dictionary Meaning torture means putting a person to the rack of severe pain. The Cambridge International Dictionary of English defines the term as “an act of causing great physical pain in order to persuade someone to do something or to give information or as an act of cruelty.”

According to Jeremy Benthem torture means where a person is made to suffer any violent pain of body in order to compel him to do something or to desist from doing something. The essential character of torture is that it is a crime of obedience. The world Medical Association in its Tokyo Declaration gave a clear definition of torture stating that, torture is deliberate, systematic or wanton infliction of physical or mental sufferings by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession or for any other reason.

Torture is not defined in any Article of the Constitution or in any penal provision in India. Inspite of it, it is well understood and treated as violating personal liberty.
guaranteed under Article 21. Though Sections 220 and 330 IPC have been mentioned as amplification of prohibition of torture but these provisions have been held to be inadequate in as much as they only punish the culprit without giving any benefit to the victim.

It may safely be stated that the concept of torture as mentioned above are characteristically narrower than the one adopted in 1975 by the U.N. General Assembly in a unanimous Declaration on the Protection of All Person from being subjected to Torture. Article I of the Declaration states:

Torture means any act by which severe pain or suffering, whether physical or mental is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession or pushing him for an act he has committed, or intimidating him or other persons. It does not include pain or suffering arising only from inherent in or incidental to, lawful sanctions to the extent consistent with the standard minimum rules for the treatment of prisoners. 33

The Declaration provides a wider definition of torture than the juristic definitions of torture formulated by J. Bentham. It includes “mental torture” also it covers instigation by a public official and refers to a range of specific purposes for which torture is applied. The Declaration provides a regime for protection of individuals from such practices. But the complete definition has been framed by the General assembly of the United Nations in its Convention against Torture and other Cruel, Inhuman and Degrading Treatment or punishment. Article-1 of the Declaration provides as under:

“The intentional infliction of severe pain or suffering whether physical or mental upon a person. The infliction of pain or suffering is caused for the purpose of obtaining information or a confession from him or a third person or intimidating or coercing him or a third person for any reason based on discrimination of any kind. The information or confession should be such as to lead to the punishment for an act which he or third person has committed or is suspected of having committed and such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. However, such pain or suffering does not include pain or suffering arising only from
inherent in or incidental to lawful sanctions.\textsuperscript{34}

In the first trial for torture in 1975 in Greece some of few pragmatic instances of torture are mentioned hereunder to exemplify the concept of torture which is as under:

When a person was arrested and put in prison, He was told \textit{"you know it is possible that some part of body might be destroyed. You are in out hands you would vomit blood. All your teeth will come out one by one."}

Beating was the usual mode of torture of the victim. In the words of one witness "general blows" were administered when prisoners were being taken to the punishment block. "Special blows" were administered during ordeal. At this time there would always be two guards in the cell. The blows were administered on the buttocks and the shanks so that blood started to collect in the lower extremities and caused pain. The detainees were kept without any food and water day after day and beaten up continuously. The victim would experience hallucinations. Blood was taken out of the body slowly till the victim died\textsuperscript{35}

A person was put in water and the water was heated up or cooled down to a temperature where a person was either boiled or frozen to death. Generally it happens in dictatorship. But democracy is even no exception. In many democratic countries also prisoners are interrogated in a gruesome manner in police custody. Inhuman and humiliating treatment of under trials and detainees including physical violence and mental torture are the orders of the day. There are at least six sources from which one may learn about the varieties of police torture. First, victims of torture (including the inflictors of torture themselves) may provide account of custodial violence. Biographical or autobiographical accounts, where victims, their next to kin or witness may provide the source of information concerning police torture. Second, scholarly analysis and official repots on the police organization may provide such information. Third, non-governmental bodies whether international (such as Amnesty International) or national may document police excesses. Fourth, attitude of citizens to police especially their fears of possible custodial violence to themselves. Fifth source of information concerning torture is the media, specially, newspapers and investigating periodicals. The sixth source of knowledge comes from the work of judicial or quasi-judicial bodies etc. However, the authoritative information concerning the existence and non-existence of police torture in custody can be
obtained from the sixth source. Death in police custody due to torture is not a phenomenon limited to emergency excesses. It is of frequent occurrence and now it has become a routine matter. Rape on women in police custody has also become a common feature. Most recent tragic instance of this is recorded in the finding of the Muktadar Commission in the notorious Rameez Bee case, which led to massive public resentment.

In D.K. Basu vs. State of West Bengal Hon’ble Supreme Court through Justice Kuldip Singh and A.S. Anand explained the custodial torture as follows:

*Torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak. The word torture today has become synonymous with the darker side of human civilization. In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of the police station or lock-up. Whether it is a physical assault or rape in police custody, the extent assault or rape in police custody, the extent of trauma a person experiences is beyond the purview of law. Custodial torture is naked violation of human dignity and degradation which destroys, to a very large extent the individual personality. It is calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward.*

Hence the law Courts consider it as their sacred duty, as custodian and protector of fundamental and basic human rights of the citizens to prevent torture and deter the police and person involved in this heinous act. Torture is therefore understood in a wider sense as it includes custodial torture, custodial rape and custodial violence not resulting in death.

The Hon’ble Court further observed that fundamental rights occupy a place of pride in the Indian Constitution. Article 21 provides “no person shall be deprived of his life or personal liberty except according to procedure established by law. Personal liberty is a sacred and cherished right under the Constitution. The expression: life or personal liberty has been held to include the right to live with human dignity and thus it also includes within itself a guarantee against torture and assaults by the state or its functionaries.
Shyam Sunder Trivedi vs. State of Madhya Pradesh\textsuperscript{39} In this case one Nathu Banjara was brought to police station for interrogation as a suspect in a murder case and four police personnel tortured him with intention of extracting information and at last he died in police custody and dead body was removed in a jeep for postmortem examination with the ultimate object of cremating. This case furnishes a classical example of the concern of the Supreme Court to save the common man from custodial violence in as much as it finds at least four police personnel guilty of his death and convicted and sentenced under Sections 304 read with 34 IPC, besides Sections 201 & 342 IPC. The Supreme Court while passing the judgment as aforesaid made the following observations that the payment of compensation should be made to the heirs of deceased and the Court shall take all such precautions as are necessary to see that the money is not allowed to fall into wrong hands and it should be utilized for the family of deceased.

In Kishore Singh vs. State of Rajasthan\textsuperscript{40} Supreme Court expressed its concern for gruesome act of police torture and observed as under:

\textit{Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human dignity.}

In Niranjan Singh vs. Prabhakar Rajaram\textsuperscript{41} the Hon'ble Supreme Court noted the unfortunate developing of custodial torture in police stations and said that the police instead of being protector of law have become engineer of terror and panic putting people into fear.

Torture vests the investigating authorities with the power to predetermine the guilt of the accused. It even allows them to prescribe punishments other than the fines and imprisonment provided for the offences. It dehumanizes both those who are tortured and those who inflict it. By its very nature torture is a denial of right to human dignity\textsuperscript{42}. Thus the law prohibits torture, and states that confessions extracted by force generally are inadmissible in Court, however, authorities often used torture during interrogations and extorted money as summary punishment.

\textit{Custody}

In Layman language a person is deemed to be in custody of police when he comes
into the hands of the police and can’t leave. According to Legal Dictionary custody means seizure or forcible restraint, an excuse of the power to deprive a person of his or her liberty; the taking or keeping of a person in custody by legal authority, especially, in response to a criminal charge. Legal dictionary further defines the meaning as the care, possession and control of a thing or person, the retention, inspection, guarding, maintenance or security of a thing within the immediate care and control of the person to whom it is committed. In other words it means detention of a person by lawful authority or process.

Custodial crime is defined as a crime occurring during the period when some limitation is placed upon the liberty of the accused and that limitation is imposed, directly or indirectly, by the police. Clearly this means it is immaterial whether or not the death occurs within premises of the police station what matters is control of police over the victim. Police custody thus means placement of the victim with police during any action which resulted in loss of freedom of movement of the victim. Thus by going to police station and making a statement which shows that an offence has been committed by him, a person not only accuses himself but also surrenders himself to the custody of the police. In Parambansa vs. State of Orissa it was held that “Police custody” for the purpose of Section 26 does not commence only when the accused is formerly arrested but would commence from the movement when his movement is restricted and he is kept in some sort of direct or indirect police surveillance. As soon as accused or suspected person comes into the hands of police officer, he is, in the absence of every clear and unmistakable evidence to the contrary no longer at liberty and is therefore in “custody” within the meaning of Sections 26 and 27 of the Evidence Act. Even indirect control over the movements of suspects by the police would amount to ‘police custody’ within the meaning of Section 26.

Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody, submission to the custody by word of mouth or action by a person is sufficient.

In Joginder Kumar vs. State of U.P it was said that custody commences from the time restrictions are imposed on the movements of the accused and he is kept under detention by authorities. It also includes a situation where the detainee is called to the police station for the purpose of interrogation and from the time a person is placed
under the arrest. It implies that in every arrest custody is necessarily involved but vice-versa need not necessarily exist. Custody may amount to arrest in certain cases but not in all cases. Hence, actual detention, confinement or arrest is not necessary for custody. Only submission of an accused into custody by any action or words of the police is sufficient. Custody does not involve any sinister symptom of violence and atrocity, rather it involves, in almost all the cases and circumstances, guardianship and protective care of detainee. The same is applicable to police custody.

The higher Courts laid down guidelines and principles of custody jurisprudence, leaving no place for any ambiguity in understanding the spirit behind the constitutional and statutory provisions relating to human rights and human dignity. Custody jurisprudence includes provisions regarding arrest, handcuffing, custodial crime and victim compensation.

In D.K. Basu vs. State of West Bengal, the Supreme Court laid down the guidelines to be followed in all cases of arrest, custody and detention which are reproduced below:

- The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

- The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo must be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place.

- The time, place of the arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives
outside the district or town through Legal Aid Organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

➢ The person arrested must be made aware of his right to have someone informed about his arrest or detention as soon as he is put under arrest or is detained.

➢ An entry must be made in the diary about the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the officials in whose custody the arrestee is

➢ The arrestee should, where he so requests, be medically examined at the time of his arrest. Major and minor injuries, if any, present on his/her body, must be recorded at that time. The Inspection Memo must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee.

➢ The arrestee should be subjected to medical examination after every 48 hours by a trained doctor during his detention in custody appointed by Director, Health Services of the concerned state of Union Territory. Director of Health Services should prepare a panel for all Tehsils and Districts as well.

➢ Copies of all the documents including the memo of arrest referred to above should be sent to the area magistrate for his record.

➢ The arrestee may be permitted to meet his lawyer during interrogation though not throughout the interrogation.

➢ A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within twelve hours of effecting the arrest and at the police control room it should be displayed on a conspicuous police board.

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action and also render him liable to be punished for contempt of Court and the proceeding for contempt of Court.
may be instituted in any High Court of the country, having territorial jurisdiction over
the manner.

The requirement, referred to above flow from Articles 21 and 22(1) of the
Constitution and need to be strictly followed. These would apply with equal force to
the other governmental agencies also to which a reference has been made earlier.
These requirements are in addition to the constitutional and statutory safeguards and
do not detract from various other directions given by the Courts from time to time in
connection with the safeguarding of the rights and dignity of the arrestee.

However, the aforesaid requirements have not been complied with in letter and spirit
by the state governments. Taking it seriously, the Supreme Court in D.K. Basu vs.
State of West Bengal (II) 48 again directed the states to strictly comply with the same,
observing that "the state governments ought to know that protection of human rights
is their primary constitutional obligation and not the sole concern of the Court.

Moving a step the Apex Court in D.K. Basu vs. State of West Bengal 49 (III) directed
the State’s Human Rights Commissions also to monitor the compliance of the
requirements issued by the Court previously by taking all necessary steps including
surprise checking.

Violence in the custody of police is totally prohibited but it is very unfortunate that
police, who are the custodian of law, violate all norms of humanist constitutional
order by indulging in torture on prisoner, accused, under trials and even on suspects.
The Constitution of India guarantees to everyone the right against custodial violence
& death. The Supreme Court has taken a very positive stand against police atrocities,
intimation, harassment and use of third degree methods to extract confession. The
Court has characterized all these as being against human dignity. Though this right is
not motioned specifically in the Constitution the Supreme Court of India through its
progressive interpretation has confirmed this right on individuals.

In Delhi Judicial Service Association Tis Hazari Court vs. State of Gujarat 50 Apex
Court laid down the guidelines with regard to custody, arrest & detention of a
Judicial Officer in view of paramount necessity of preserving the independence of the
judiciary. These guidelines are as under:

1. If a Judicial Officer is to be arrested, it should be done under intimation to the
District judge or the High Court as the case may be.

2. If case and circumstances necessitate immediate arrest of a Judicial Officer of the subordinate Judiciary, a technical or formal arrest may take effect.

3. The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

4. The Judicial Officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned District, if available.

5. Immediate facilities shall be provided to the Judicial Officer for communication with the family members, legal advisers and Judicial Officers, including the District and Sessions Judge.

6. No statement of a Judicial Officer who is under arrest is recorded neither any panchnama be drawn up nor any medical test be conducted except in the presence of the Legal Adviser of the Judicial Officer concerned or another Judicial Officer of equal or high rank, if available.

7. There should be no handcuffing of a Judicial Officer if, however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb, the person resisting arrest may be overpowered and handcuffed. In such case immediate report shall be made to the District and Session Judge concerned and also to the Chief Justice of the High Court. But the burden would be on the police to establish the necessity for effecting physical arrest and handcuffing of the Judicial Officer and if it established that the physical arrest and handcuffing of the Judicial Officer was unjustified the Police Officer causing or responsible for such arrest and handcuffing would be guilty of misconduct and would also be personally liable for compensation and damages as may be summarily determined by the High Court.

In the instant case the Court also observed that the above guidelines are not exhaustive but these are minimum safeguards in case of arrest & custody of a Judicial Officer. The Apex Court further directed that no Judicial Officer should visit
a Police Station on his own except in his official and judicial duties and functions. The Court laid down that if it is necessary for a Judicial Officer or a subordinate Judicial Officer to visit the Police Station in connection with his official duties, he must do so with prior intimation of his visit to the District and Sessions Judge. Court also opined that sharp rise in custodial violence, torture and death in custody justifies the urgency for the amendment as suggested by the Law Commission in the report.

Again Supreme Court has taken a series view of Photograph published in “The Hindu” newspaper with regard to transporting of four accused person from the Court to the jail in an iron cage as if they were animals. The Hon’ble Court has issued notice to the Punjab Government for a direction to initiate action against the policeman responsible for this heinous incidence and said this incident is inhuman act and very shocking to the conscience of every citizen and a grave violation of the fundamental right provided under Article 21 of the Constitution.

In spite of legal ban to the contrary and growing concern against violence in custody media reports shows increasing incidents of custodial violence. The reports present shocking incidents of Police brutality by citing examples of different uncalled methods of torture in custody which smack of uncouth and fear psychology on the face of the largest democracy of the world. Thus Police is no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third degree interrogation and investigation with a view to solve the crime. End cannot justify the means. No society can permit it.

**Arrest and Detention**

Human rights cut across all political, social, ideological and cultural domains. Human rights are of universal importance as they are available to the entire humanity irrespective of race, religion, colour, sex or domicile. Violation of basic human rights is universally condemned, irrespective of cultural differences of Western and Asian countries.

According to Meaning Dictionary, the term "arrest" means to detain any one by lawful authority, especially when he is suspected of having committed a crime. Even a private person can make an arrest if a crime has actually been committed and he has
reasonable grounds for believing that the person to be arrested as committed it.\textsuperscript{54}

According to Legal Dictionary arrest means a situation in which the police detain a person in a manner that, to any reasonable person, makes it clear she or he is not free to leave.\textsuperscript{55}

In legal parlance under section 46 of Criminal Procedure Code arrest is complete when there is submission to custody by word or action, and in such a case touching or confining of the body of the person arrested is not necessary, but mere surrounding of a person by the police does not amount to arrest. If someone forcible resists arrest, the police officer can use all means necessary to effect the arrest.\textsuperscript{56}

Therefore, unnecessary restraints or causing physical inconveniences tying of hands and feet are not permissible if there is no necessity for doing so. The word" arrest" has a wider meaning than it is generally understood. In common parlance, it means detention of some body by the police under the authority of law. However, police often exceeds the power given to it by law in this regard. The Courts have also voiced their concern on indiscriminate use and abuse of power of arrest by law enforcement agencies on several occasions.

**Guidelines for Police Officers in India on making arrests**

One of the most important Powers, possessed by the Police under law, and exercised by it on a day to day basis, is the power of arrest. However exercise of this power involves discretion, which makes it liable to misuse. In fact, it is often misuse by them .The National police Commission\textsuperscript{57} [NPC] examined this subject in its third Report (January, 1980) and came to the following conclusions:

- A large number of discretionary and unnecessary arrests are made by the police, mainly on minor grounds.
- This gives rise to corruption and other malpractices, thereby adversely affecting police image.
- It leads to overcrowding in prisons, and unnecessary expenditure on maintaining arrested persons.

Because the exercise of arrest powers can seriously restrict individual rights, a number of guidelines have been framed in order to enable police officers to use their
powers judiciously, in a manner that safeguards human rights, without diluting effectiveness to curb crime or maintain order.

Section 41 of the Criminal Procedure Code, allows a police officer to arrest a person if person is guilty of any of the following acts:\textsuperscript{58}

1. Is involved in a cognizable offence: a reasonable complaint has been made against her/him; or credible information has been received about her/him; or a reasonable suspicion exists regarding her/his involvement in a cognizable offence;
2. Unlawfully keeps implements of housebreaking in his possession;
3. Is a proclaimed offender;
4. Is found to be in possession of property which may reasonably be suspected to be stolen; or is suspected of having committed an offence in relation to stolen property;
5. Obstruct a police officer from lawfully discharging her/his duties or escapes or attempts to escape from lawful custody;
6. Is suspected to be a deserter from the Armed Forces;
7. Commits or is suspected of committing an offence outside India, which is punishable in India and for which she/he can be detained in custody.
8. Being a released convict, commits a breach of any rule made by the State Government under Section 356 Code of Criminal Procedure, 1973 requiring a previously convicted offender to notify her/his change of residence;
9. Require to be arrested on the request of another police officer and sufficient grounds for arrest have been shown by the police officer requesting the arrest.
10. Belongs to one or more categories of persons specified in Sections 109(3) or 110(4) of the Code of Criminal Procedure, 1973.

The Code of Criminal Procedure,\textsuperscript{59} 1973 confers wide powers on the police to arrest. Investigation powers of the police can arise in the following circumstances:

\begin{itemize}
\item On receiving information relating to the commission of a cognizable offence from an informant (under Section 154(1)),
\end{itemize}
➢ On receiving order from any Magistrate to investigate (Section 156(3))

➢ On receiving information from any source about commission of a cognizable offence within his jurisdiction (under Section 156(1)).

Since the power to arrest entails serious infringement with the physical liberty of a person, there are several provisions under the Criminal Procedure Code for guidance of police officers. These provisions not only empower the police but also provide the necessary inbuilt safeguards against abuse of power of arrest by police.

It is significant to note that Criminal procedure Code has adequate provisions to prevent arbitrary arrest and detention. Beside these provisions Supreme Court also formulated guidelines to guide the police but the pity is that innocent people are arbitrary arrested, detained and tortured for confession and gathering information and some of them died later.

**National Law on Arrest**

While effecting arrest, the enforcement authority shall not do following things which are enunciated in the following Articles.

<table>
<thead>
<tr>
<th>Section. 41 Cr.P.C.</th>
<th>Arrest a person without warrant, unless there is a reasonable satisfaction about the person's involvement in a cognizable offence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 151</td>
<td>Arrest a person u/s 151 Cr. P.C., to prevent the commission of cognizable offence, unless the officer concerned has a knowledge of design of such person to commit any cognizable offence and it appears to such officer that the commission of the offence cannot otherwise be prevented.</td>
</tr>
</tbody>
</table>

| Section 49 and Article 21 of the Constitution | Not use more force than is necessary to restrain an arrested person. |

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Perform public display or parade the person arrested at any cost.

*While effecting arrest, the enforcement authority shall ensure following things*:

| Article 21 of the Constitution | Ensure that no person is deprived of his/her right to life or personal liberty, except in accordance with a procedure established by law. |
| Article 22 (1) of the Constitution | Ensure that the arrestee is informed of the full particulars or the grounds of arrest. |

There are some leading cases decided by Apex Court on illegal arrest and detention which shows active participation of Court on curbing illegal arrest and detention and torture by police officers. There have been many occasions when “government lawlessness” came to surface.

*Bhim Singh vs. State of Jammu&Kashmir* is an example of such lawlessness. In this case Bhim Singh, a member of the Legislative Assembly of the State of Jammu and Kashmir while proceeding to attend the house of legislative assembly was prevented and detained by the police. He filed habeas corpus petition under Article 32. The Court observed that when a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away by his been set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation.

The next important case worth discussion is *Joginder Kumar vs. State of U.P. & Others*. In this case the Supreme Court opined that no arrest can be made because it was not lawful for the police officer to do so. The existence of power of arrest is one thing, the justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bonafide belief both as to the person’s complicity and even so the need to affect arrest. Denying a person his liberty is a serious matter. Further Hon’ble Court also given direction for the effective enforcement of fundamental rights.
enshrined under Article 21 and 22(1) of Indian Constitution which are as under:

a) An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as for as is practicable that he has been arrested and where he is being detained.

b) The police officer shall inform the arrested person when he is brought to the police station of this right.

c) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from the Constitution must be held to flow from Article 21 and 22(1) and enforced strictly.

d) It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

The Supreme Court directed that the above requirements shall be followed in case of arrest till legal provisions are made in this behalf and these requirements shall be in addition to the rights to the arrested person found in the various police manuals.

The pronouncement of this case settled the law and left no ambiguity regarding exercise of power of arrest by the law enforcement agencies. Arrest is not a rule in every case. Arrest should be made after thorough investigation and that too only in those cases where detention of the person would serve some purpose to further the cause of justice.

The effect of this landmark judgment of the Court is that now police have to take care while arresting a person and cannot illegally detain a person as a matter of right. Again in *Sheela Barse vs. State of Maharashtra* the Supreme Court observed that whenever a person is arrested by police without warrant, he must be immediately informed of the grounds of his detention and in case he is entitled to bail he must be immediately informed about it. The police will intimate the fact of his arrest to the nearest legal aid committee and the committee will arrange the legal aid for the arrested person and the nearest relative shall be informed about the arrest of the persons without any delay. The Magistrate before whom the person is produced shall inquire from the arrested person whether he has any complaint of torture and
maltreatment in the police custody.

The guidelines issued by the Court were reaffirmed in the famous case of *D.K. Basu vs. State of West.Bengal*\(^5\). In this case the Supreme Court laid down the guidelines with regard to all cases of arrest and custody detention which we have already discussed previously.

Unlawful arrest or arbitrary detention, torture, rape, racism, ethnic cleansing and politically motivated disappearances are not tolerated by any faith or culture, which respects humanity. But one of the serious problems faced by our country is violation of human rights by individuals and institutions established to uphold these very principles. Illegal arrest and detention, rather violence has become a part of life and the existing penology has completely failed to eradicate it. There has been a lot of discussions and debates on the preservence and protection of human rights It has thus assumed the character of an academic fashion but no serious thoughts have been given to provide an in-built mechanism in the administrative and supervisory structure to ensure constant watch on this vulnerable task of human society.

*Encounter killing following torture.*

The term encounter killings is a euphemism used to describe extra judicial killings in which police or the military kill innocents, suspects, criminals or members of armed opposition groups in alleged encounters. Encounter killings have been a feature of law enforcement in India for decades. These killing again rose to public prominence in 1980’s in Andhra Pradesh and Mumbai. The euphemistic nature of the problem is underlined by the fact that some of Mumbai’s police became known as ‘Encounter Specialists’. The security forces use these means to apply ‘speedy justice’ and circumvent the formal legal system.\(^6\)

Encounter killings contravenes International law. Article 3 of the Universal Declaration of Human Rights states, "everyone has the right to life, liberty and security of person". Further Article 6 of the International Covenant on Civil and political Rights (ICCPR) states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Further Article 4 of the ICCPR states that this right cannot be waived "even in times of public emergency threatening the life of the nation."
Under Article 2(3) (a) and (b) of the ICCPR, State parties are obliged to ensure that remedies are available to the victims of human rights violations

The National Human Rights Commission also issued "Guidelines/procedures to be followed in dealing with deaths occurring in encounter deaths" to be followed by the State Governments in dealing with deaths occurring in encounters with the police on 29 March 1997. The Guidelines were subsequently revised on 2 December 2003. The States are required to inform the National Human Rights Commission of all the cases of deaths resulting from police encounters. The Commission also recommended the modified procedure to be followed by State Governments in all cases of deaths, in the course of police action. The National Human Rights Commission stipulated that such cases should be investigated by an independent investigating agency, such as the State Crime Branch- Criminal Investigation Department (CBCID), and whenever a specific complaint is made against the police alleging commission of a criminal act on their part, which makes out a cognizable case of culpable homicide, a First Information Report to this effect must be registered under appropriate sections of the Indian Penal Code. The National Human Rights Commission recommended that these cases should be investigated by the State that a Magisterial Inquiry should be held and the family of the deceased should be involved in the inquiry.

The National Human Rights Commission also directed all the Chief Ministers and Administrators to send a six monthly statement of all cases of deaths in police action in the States. Further, the Supreme Court in its judgment on the constitutional validity of the Armed Forces Special Powers Act in October 1997 stated:

A person arrested and taken into custody in exercise of the powers under Section 4(c) of the Central Act should be handed over to the Officer-In-Charge of the nearest police station with a minimum possible delay so that he can be produced before the nearest Magistrate within 24 hours of such arrest excluding the time taken for journey from the place of arrest to the Court of Magistrate.

Expressing serious concern over the increasing incidents of encounter deaths in the country, the Supreme Court has said it proposes to frame guidelines to be followed by all the States and Union territories whenever encounter deaths take place. The bench issued notice to the Centre, all State and Union territories seeking their response on the proposed guidelines. The bench passed this order on a petition filed by the
people's Union for Civil Liberties (PUCL) Mumbai, highlighting several fake encounters by the Maharashtra police. The Bench also said that it would examine the propriety of police officers briefing the media on the progress of the investigation of a particular case and directed the listing of the matter.70

**Different category of custodial crimes**

Custodial violence or the atrocities committed by the members of the police force, the prison officers and members of Para-military organizations have been subject of great concern to the Government and society. Any act on the part of the police which violate the basic dignity and liberty of an individual guaranteed by our Constitution invokes scathing criticism from conscious and alert citizens. The media has also become resonant with voices of protest whenever there is any encroachment on individual liberty and violation of basic human dignity.

Custodial crime or violence may be committed in different forms. The most frequently used methods of inflicting torture are as under:

- Physical and mental torture inflicted on accused persons in police custody during and following their arrest.
- Incidents of torture or sexual abuse on women in custody.
- Incidents of atrocities committed in prison by the prison staff on convicts or under-trial prisoners.
- Incidents of violence and atrocities by the member of military / paramilitary organization in post war period or in course of suppression of activities of the extremist groups for maintenance of internal security.
- Incidents of torture, ill-treatment and sexual abuse on women victims in rescue homes.

**Custodial torture and its kinds**

No Violence of anyone of the human rights has been the subject of so many Convention and Declarations as "Torture", all aiming at total banning of it in all forms, but, in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now then ever before.

During interrogation by police the suspects are subjected to merciless beatings with
lathies, rifle butts and whips. Many are kicked, punched and trampled on the ground. A few were stripped and electric shocks are applied to their body including private parts. Hairs are pulled out. The suspects describe the interrogation room of police station as a virtual hell filled with screams of damned and shots and abuse of the tormentors. Thus, torture becomes an independent tool for creating terror in the mind of suspects. The methods used are as follows:

- Beating and kicking.
- Beating both in public view, at home before family members and also inside the army camps by hand, lathies, rifle butts and whips.
- Punching in face, head and abdomen.
- Kicking in chest, abdomen and back.
- Trampling and kicking a man, made to lie down on ground.
- Beating with lathies or soles of foot.
- Hanging the person from ceiling beams by hands.
- Hanging from tree in upside down position.
- Hanging the person by one hand only, other hand bound behind back.
- After a person is so hanged, he is severely beaten and other forms of torture are carried out.
- Wet submarine treatment i.e. immersing the head of the person in a bucket or drum of water till he is nearly drowned.
- Continuously pouring water over the mouth and nose of a person after he is bound up and immobilized till he is nearly suffocated.
- Staking i.e. a person is made to lie down on ground, either face up or face down position, and his hands and feet are tied in a spread-eagled manner to stakes driven to ground. By this method a person is totally immobilized. Then he is beaten, kicked or trampled under boots or tortured in other ways. Sometimes lathi is rolled forcible over his back by two soldiers causing blood vomiting and evacuation of bowels in severe pain.
- Keeping bound up an uncomfortable sitting position to a state or tent pole for
hours, even days together.

- Frame treatment i.e. a person is bound spread-eagled to a vertical rectangular wooden frame, and thus, immobilized and tortured.²²

- Giving electric shock-Electric shock is given from a 12 volt car battery or directly from domestic mains. Shocks are given to head, eyes, cheeks, ears, neck, shoulders, armpits back and even to private parts.

- Uprooting hairs by pinchers from head, eye brow, armpit and even pubic hair.

- Hitting a person on his genitalia and testicle till he becomes unconscious from pain.

- Applying chili powder to eyes, with the hand bound behind his back, and also to anus.

- Forcefully pulling apart the legs by two soldiers resulting in tear of the anus.

- Pushing a stout lathi, smeared with chili powder and petrol, through the anus.

- Burning with lighted cigarette. Such burns are given to private parts.

- Sticking pins all over the body.

- Burying in ground up to neck and covering the head with a bucket.

- Denying food and water for days together.

- General physical punishment and humiliations. Usually large groups are subjected to these. People are linked up in camps, sometimes in full views of the women folk, and are forced to do the following²³.

  - To kneel facing the sun for hours.

  - To stand naked in sun and rain.

  - To stand in waist-deep or neck deep water for hours.

  - To perform frog jumps till the person is exhausted.

  - To run in circles.

  - To carry army jawans on back over long distances.

  - To perform sit-ups holding the ears.
Forcing to eat sand, earth or to drink alcohol and filthy water.

The most disturbing features of the widespread inhuman torture are as follows:

- Persons tortured lose their mental balance, suffer from severe insomnia and become paranoid.
- Those given electric shocks to the head suffer from intense headache, memory loss, and visual disturbance and have various wired symptoms.
- Those who are physically tortured, specially those who are kicked, trampled upon or beaten with blunt lathies suffer from severe muscle and joint pains; blood vomiting, passage of black- coloured stool or melaena; passage of blood in urine; inability to use one or more arms, forearms, fingers, legs, etc. and damage to flexes and other neurological features.
- Those who are tortured in genitation develop loss of libido, impotency and other sexual abnormalities.²⁴

Factors Responsible for Custodial Violence and Torture

A bare analysis of the fact situations laid down in a few cases pertaining to custodial violence portrays the stark reality of life of detainees and prisoners behind the bars. Each and every case for that, matter narrates the miseries of different individuals who have succumbed to death are still suffering and badly battered in their dark and sullen cells. Police atrocities in form of custodial violence are increasing day by day. The main problem lies with the police Act, 1861 itself which is the basic law on the subject. Now reasons due to which the problem of custodial violence and torture has become a matter of serious concern are discussed here.

a) Psychological Reasons

These reasons include lack of proper motivation, overzealousness of investigating officers to ensure detection of cases by eliciting confession from arrested accused persons and low morale of the members of the force. In discharging their duties as Investigating Officers many officers at the police station resort to third degree as short-cut method of detection. ²⁵

The use of scientific methods of investigation in detection of a case calls for
tremendous patience, tenacity and professional expertise. The use of scientific methods of investigation may at times be a long drawn process. Investigating officers lack proper orientation in scientific methods and they resort to third-degree for eliciting confession and for unearthing mystery or motive behind the commission of offence. Sections 330 and 331 of the Indian Penal Code provides a maximum of 10 years imprisonment or fine or both for causing voluntary hurt or grievous hurt to extort confession or information or to compel restoration of property. In spite of such legal provisions still being in force, they do not have salutary effect in preventing custodial violence or use of third degree by the police officers and men. Officers with low morale and suffering from a sense of deprivation may at times resort to custodial violence for deviating sadistic pleasures.  

There is a palpable dichotomy in public expectation from the police. On the one hand it takes a high moral position vis-a-vis third degree but in private it will goad the police to take recourse to third-degree method if personal interest is involved. The some judicial officer who rebukes the police in public for being high handed will expect the police to recover his stolen properties by means fair or foul. This contributes to the continued prevalence of the third degree and thereby custodial crimes is continue.

b) Lack of Infrastructural Facilities

Lack of infrastructural facilities leads unfortunate incidences in the police station. Absence of separate female lock up in many police-stations has made them unsafe for women who are detained at the police station after their arrest. The problem is further aggravated due to absence of sufficient number of lady police officers and lady constables at the police station. In most cases sexual harassment in form of molestation or rape in the custody is committed on women who are left alone in the custody of sentry constables and duty officers at odd hours of day and night.

c) Administrative Reasons

Absence of proper supervision of the functioning of the officers at the police station instigates commission of custodial violence. Officers at the police station level feel that their activities are not being monitored by superiors or supervisory officers. They take the liberty of working recklessly indulging in perpetration of custodial
crimes. To keep them under proper restraint is one of the duties of supervisory officers. Surprise visits by the superiors at the police station may help reducing such reckless tendency on the part of the officers.

There are some other factors also which show that police forces are dissatisfied on the following accounts and so they commit custodial violence:

- They work in abhorrent conditions such as they may be called to duty at anytime and anywhere especially when problem comes. This duty is harassing and unpleasant for them. Many times they are harassed not only by their superior but by other political officials as well.
- Their salaries are meager, living conditions bad and to fulfill their needs they indulge in corruption.
- In many police stations staff is not sufficient and so work load is high which create problems.
- Unwarranted influence by the politicians in the police work also adversely affects the spirit of honest and sincere police personnel.
- Aggressive enforcement of law and order as a quick fix solution to the problem of rising crime, without tackling the root causes behind the increase in crime.
- Malfunctioning of our criminal justice system like delays in Court trials, which result to the over loading of code etc.
- At time undeserving under trials manage to procure bail and this forces the police to extract the maximum information available in the limited time, mostly resulting in torture.
- Obsolescent and outdated organizational system—this is one of the most important reasons for the inability of the police system to confirm the demands of the human rights mandate. The pity about the matter is that the basic rule of the police and its structure did not undergo any change.
- Lack of accountability for the past few years, there has been total lack of control and accountability in the police system. This can be seen in the ambivalent attitude of the police to use third degree methods and the illegal detention.
- Custodial torture cases are treated in the same manner as other criminal
cases, which all nullify the possibility of an effective and impartial investigation. As a result, ordinary people do not have confidence in the capacity of police to investigate alleged torture committed by their peers and colleagues.

➢ The police investigation process is overloaded which cause delay. There is no transparency in the police interrogations which can hamper the criminal justice system of any country.

After going through the nature and dimension of custodial violence, different forms of torture used by police and factors responsible for custodial torture in India, it may be concluded that the problem of custodial violence is deeply rooted in this country. The Human Rights Watch Year Report of 2006 stated that the government continued to use legislation that shields security forces from accountability. Indian military, paramilitary, and police force have engaged in serious human rights abuses in conflict zones and yet there have been no attempts have been made for transparent investigations or prosecutions of the guilty police officers. Police reform was discussed in reports and commissions but torture during interrogation remained the same. Amnesty’s year report of 2005 (dealing with 2005) confirmed this: ‘Security legislation was used to facilitate arbitrary arrest, torture and other grave human rights violations, often against political opponents and marginalized groups’80

Moreover, in Kolkata there are several individuals who were tortured in the 1970s and who continue to suffer physical and psychological consequences81. Many alleged torture victims died in custody, and others were afraid to speak out, there were few first hand account, although marks of torture often were found on the bodies of deceased detainees. The prevalence of torture by police in detention facilities throughout the country was reflected in the number of cases of deaths in police custody. Police and Jailers typically assaulted detainees and prisoners for money and personal articles. In addition, police commonly tortured detainees during custodial interrogation. Although police officers were subject to prosecution for such offences under the Indian Penal Code, the Government often failed to hold them accountable. Accordingly, torture usually took place during criminal investigations and following unlawful and arbitrary arrests. In Punjab the vast majority of police officers responsible for serious human rights violations during the period of militancy in the
mid-1990s continued to evade justice, despite the recommendations of several judicial
inquiries and commissions.\textsuperscript{82} It can be said this heinous crime can only be eliminated
with the help and co-operation of Police officials themselves. Necessary reforms and
modifications under the police Act are also necessary. This practice has continued
since long and in recent years, third degree torture and custodial violence have
become an intrinsic part of police investigations. The injury inflicted on the people in
custody is sometimes unbearable which even results in custodial deaths.
Imprisonment itself is poisoning, but when clubbed with torture it actually poisons the
life of an individual. Police forces the person in custody to say or to do something
against his will at any cost. This is achieved by inflicting injuries, pressure, both
physical and mental on the person.

A senior police officer of the Lucknow district, speaking on condition of anonymity,
said handcuffing was done only in case of hardcore criminals or when the accused
had a previous record of escaping or there was a genuine apprehension that he would
escape, "it is not done in case of normal persons" the officer added. Nirmal Kumar
Azad, a Superintendent of Police in Siwan, Bihar, has collected data on the use of
restraints through open ended random interviews with suicidal officers, police
personnel and members of the Bar. His findings show that a large majority of
members of the Bar (83\%) and police personnel (77.7\%) are completely unaware of
the Supreme Court's directives and rely only on police manual regulations. Handcuffs
are used frequently during transport from the jail to the Court. In a large majority of
cases, the escorting authorities admitted that judicial permission is not received and
the reasons for using restraints are not documented in the police station diary

NGO sources alleged that deaths in police custody, which occurred within hours or
days of initial detention, often implied violent abuse and torture. Some NGOs were
allowed to work in prisons, within specific governmental guidelines, but their findings
remained largely confidential, as a result of agreements they concluded with the
Government.\textsuperscript{83} Thus custodial abuse is deeply rooted in police practice, increased
press reporting and parliamentary questioning gave ample evidence of growing public
awareness of the problem. The NHRC also identified torture and deaths in detention
as one of its priority concerns. Hence there is an urgent need to examine the issue of
custodial crimes as a grave violation of human rights.
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