Abstract

The Context

The present study on “Custodial Crimes in Police Custody: Causes, Consequences and Preventive Measures” has captured spectrum of police custody process and custodial treatment of accused/suspects in police custody. The present study is important for several reasons. Firstly, the study has been carried out in the State of Uttar Pradesh which has been reporting highest number of incidents of police brutality at National Human Rights Commission (NHRC) during more than a decade. Secondly, most of the studies in the domain were undertaken in the country are based on information collected through secondary sources and have studied illegal detention, torture and ill-treatment, custodial deaths, custodial rapes and disappearances separately in different states. Thirdly, while custodial crimes have drawn attention of legislature, judiciary, media, NGOs and human rights commissions etc, a little attention has been given on the plights of victims of custodial crimes. It is pertinent to mention that higher judiciary through its creative interpretation has upheld rights of the victims of custodial crimes over the years, however, the incidents of custodial crimes in police custody are still continuing. Fourthly, establishment of National Human Rights Commission has added an additional mechanism for victims-poor & voiceless to get quick redressal, yet many cases of custodial crimes are not reported to it. In this context, a field based study was need of the hour. The present study is a modest attempt to explore causes, consequences and preventive measures in the context of District Muzaffarnagar of Uttar Pradesh State.
Objectives:
The present study aims to:

1. study nature and extent of custodial crimes in police custody;
2. analyze causes of custodial crimes in police custody;
3. understand consequences of custodial crimes in police custody;
4. examine critically preventive measures to combat custodial crimes;
5. assess the role of Human Rights Institutions and Civil Society Organizations in addressing issue of custodial crimes; and
6. suggest ways and means to control custodial crimes in police custody.

Assumptions:
The present study is based on following assumptions;

- Custodial torture is used as a tool to extract confession in police custody;
- torture is main cause for custodial crimes in police custody;
- torture serves the purpose to deterrent on other criminals in society;
- victims of custodial crimes belong to poor and marginalized sections of society;
- societal acceptability of custodial violence as a means to solving crime problem; and
- impunity is a legal instrument to shield guilty police officials responsible for custodial crimes.

Conceptual Framework:
The conceptual framework for the present study is based on due process model follows by criminal justice in general and police custody in particular to secure procedural justice.

Methodology:
The qualitative methodology was used for present study. The present study is based on explorative research of inquiry and adopted case study design. The study has conducted detailed life histories of the individual victims of custodial crimes in the context of District Muzaffarnagar of Uttar Pradesh. Theoretical purposive sampling technique used guided by the objectives of the study involves sample specific rather than a representative sample was an important factor for the purpose of the study.
A Total number of 10 cases of custodial crimes in police custody were selected from the records of National Human Rights Commission, New Delhi District Crime Records Bureau Muzaffarnagar, Uttar Pradesh and cases referred by local media and civil society organizations. Thus, total sample for the present study consist of (i) 10 case studies & (ii) 150 sample key informants from various stakeholders. Various key informants were identified for the developing case studies include victim’s family or next-of-kin of custodial crimes, neighbors, accused/ suspects, undertrail prisoners, police personnel, medical officials, executive magistrates, judges, lawyers, media members, social activist and political leaders etc. The responses of the key informants from various stakeholders have been incorporated in preparing the cases studies/ life histories. The Present study has been conducted in the District Muzaffarnagar of Uttar Pradesh. The sample was drawn from 7 police stations (out of 28 police stations) located in urban and rural areas.

The Multiple methods of data collection were used in order to capture a comprehensive picture of custodial crimes. The primary data were collected through field notes; in-depth interviews and non-participant observations. While in-depth interviews provided details of the individual’s knowledge, perception, attitudes, beliefs and experiences, non-participant observation supplemented to understand the reliability of the informants through their symbolic world, supported by field work, visual, document and artifact data in understanding to the culture of the context of the study. The Secondary data were collected through documents, visual and artifact from different agencies such as post mortem or medical examination of custodial deaths, Magisterial Inquiries, Police Inquiries, CBCID inquiries and National Human Rights Commission inquiries reports and media reports. In addition, valuable literature published in different journals, various Government and Non-Government Organizations’s reports as well as academic studies undertaken by public institutions and universities. On the one hand, the study provides major findings that can be generalized and on the other hand there are findings that are specific and contextual for custodial crimes in police custody. The key findings of the present study are summarized as follows:
Findings:

Profile of Individual Victims of Custodial Crimes
The study reveals homogenous of 10 male individuals victims of custodial crimes in police custody in the context of district Muzaffarnagar of the state of Uttar Pradesh. The individual victims are mostly from poor section of society across the caste and religion (Hindu and Muslim) with low educational background. It has been found that out of 10 cases, half of them belong to urban and other half hail from rural area and engaged in either agriculture laborer (4 cases) or services in professions like painter, singer, worker in bakery and driver (4 cases). Only in two cases the victims were running their business like jeweler shop and hotel or restaurant. Their annual income between Rs. 10,000 to 20,000 (5 cases), between Rs. 21,000 to 30,000 (4 cases) and only case was above the Rs. 30,000 annual income. In 5 cases the victims were unmarried and the same number of married persons who left a number of dependents such as spouse, children, sibling and parents. On their detention, the duration of holding in police custody ranged from between 3 to 6 days (6 cases), between 3 to 6 days (3 cases) and between 7 to 10 days (1 case). 7 out of 10 cases having no criminal background which indicates that they have experienced first time police custody and also not a criminal person by nature. The remaining 3 cases had criminal history behind them. The reasons behind their custody were accused (4), suspects (2), complainants (2), one witness and an injured person.

Causes

Police Torture: Almost in all cases, the family and community members perceived the police torture as one the most visible cause of custodial crimes in police custody. Police torture includes physical, mental and chemical substances.

Police Torture and Corruption : In some cases, the families of the victims & neighbors etc told that the police demanded bribe directly from the family members of the accused or through middleman.

Police Torture and Collusion : Valuable insights from the people and evidences indicate that police in connivance with powerful person used force (torture) against accused/suspects in police custody.
Police Torture and Compromise: Across cases the family members indicated that communication from police was in terms of compromise the matter with money, withdrawal of charges against accused police personnel or action against opposite party.

Consequences:

Physical Consequences: Physical effect which includes symptoms of body pain, leg pain, arm pain, back pain, headache, swelling (eyes) heart problem, problem in cooking food and other domestic work.

Psychological Consequences: Psychological or post-traumatic stress disorder signs and symptoms are depression, anxiety, irritability, nightmares, flashback, phobia, sleeping problem, hunger problem and feeling of fear and insecurity prevailed among victims and witnesses. It include emotional problem such as lost of loved one, feeling of detached from family members (daughter in law and children who left the joint family after death of bread winner and made their life miserable) The victims often feel like patient.

Economic Consequences: In addition to fatigue and frustration of victims extended with the economic problem, living below poverty line, burden of family, children (born posthumously), care of disable child, their education and marriage, payment of debt due to expenditure occurred during attending inquiry and investigation of the case and overall the matter of livelihood and survival.

Social Consequences: The victim’s families are living with stigma in social life. They were being ostracized, alienated and treated as criminal. Consequently, they have withdrawn from social gathering and festivals. The further harassment of family member by powerful person and institution also found re-victimization of victims and witnesses and make them vulnerable in society. In some cases migrations have taken place due to fear of authority and social discrimination.
**Political Consequences**: Political problems encompasses fear of authority embodied in the mind of the victims and keeping distance from government institution, lack of transparency in the system especially institutional response to the victim found main concern for victim’s justice. On the contrary, the victim’s life became pathetic and faced fake criminal charges due to non–comprised matter of custodial abuse with authority. Few of the victims also found with full of anger including neighborhood and community member having felling of anger on bad governance and police highhandedness. They have also shown feeling of retaliation against government.

**Developmental Consequences**: The substantial development cost of custodial violence cannot be ignored as the nation’s resources are used to service direct and indirect costs of custodial violence at the expense involved of nation building. Direct costs include expenditure on Medical services, Forensic Services Police services, Magistrate services, Justice Services, Bank services, Government fund in compensation to the victim’s family or next-of-kin. Destroy or loot of public properties, loss of human resources like the transfer, suspension and termination from police services lost of image of police and State. Indirect costs encompass the disruption to the social and economic progress and productivity of the nation, state and district as a result of the disturbance in the family support.

**Preventive Measures**
The police inquiry was always under suspicion. In 3 out of 6 cases of custodial deaths, the final reports were submitted to the court for closer of the cases in lack of evidences. Other cases are still under investigation. In contrast, the CB-CID was handed over 2 cases of disappearances where charge sheets have been filed in the court of law. One case was registered and in another one, the victim was punished by court despite the investigation conducted by National Human Rights Commission. The Magisterial Inquiry was constituted in 5 cases of deaths, out of it; in 4 cases the inquiry reports found police officials responsible for custodial deaths. Despite that no guilty officer(s) were prosecuted for custodial crimes by district judicial system.
The political parties across the ideologies had addressed the issue of custodial crimes such as taken up the cases for registering FIR against police alleged of custodial crimes, joining hands with protestors in protest movement against police administration and even raised the issue in Uttar Pradesh State Assembly.

Similarly, the Non-Political organizations like Bhartiya Kisan Union (BKU) has taken interest only in those cases where victims belonged to Jat Community or were residents of Jat dominated area. Interestingly these organizations have not taken any interest where victims were from minority and dalit communities. The role of media was generally appreciated by the victims families & communities, however, some of them have also criticized role of media for not pursuing the cases of custodial crimes properly due to corruption or due to pressured by local political leadership. So far as Non-governmental organizations (NGOs) are concerned, it is regrettable that few NGOs are active on social/legal issues such as custodial crimes. There is no compensatory scheme available for rehabilitation of the next of kin and family members of the victims of custodial crimes. In a few cases, however, out of court settlements have taken place between accused police personnel and victims facilities. For which, no record is available. Only case related with the Schedule Caste community has received Rs. 1.5 Lakh under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 on the record.

**Pattern Emerged from the Findings:**

The following patterns emerged the findings of the study;

- Poverty and Social Exclusion are closely associated with custodial crimes in police custody;
- the major reason for custodial crimes in police custody is torture and its relationships with police corruption and collusion with influential people in the society;
- the multi-dimensional consequences of custodial crimes are physical, psychological, economical, social, political and developmental;
• the weak institutional mechanisms and impunity to the guilty police officials are major factors for denial of justice to the victims; and

• The civil society is reluctant to monitor custodial crimes in police custody due to fear & danger to life from police establishment.

**Conclusion :**

The increase in custodial crimes including torture in police custody has highlighted significance of human right research in countries like India. Despite India is a party of various International human rights including UN Convention against Torture and Cruel Inhuman Degrading Treatment or Punishment( CAT 1984), torture continue to be serious problem. The present study has revealed a solid body of evidence of torture caused custodial crimes in police custody. Torture in police custody has been perceived a serious problem for individuals, next of kin or victim’s families and communities at large.

To conclude the present study set out six assumptions. Out of six assumptions mentioned below, the three were found fully true-those related to custodial violence, causes and impunity. Two were found partly true like societal acceptance of torture and victims of custodial crimes. One was found false related with the purpose of police torture to deter potential criminals in society.

The first assumption was that custodial violence is used as a tool to extract confession from accused/ suspects and witnesses in police custody. It is because our confessional based system disbelieves the police in recording confessional statement in police custody as well as non-availability of forensic interrogation tools or techniques in order to investigate the crime by police at police station level (True).

The second assumption was that Torture is a main cause for custodial crimes in police custody found true. The field data suggests that by police use torture in different forms such physical, psychological and chemical substances across the cases (True).
The third assumption was that Torture serves the purpose to deterrent on other criminals in society. However, it was found that use of torture by police in custody a source of illegal income through bribe or corruption within police department (False).

The fourth assumption was that victims of custodial crimes belong to poor and marginalized sections of society. The pattern emerged from the finding of the present study is that the individual victims of custodial crimes belong to poor strata of society but across caste and religion. This assumption is partially true.

The fifth assumption was that societal acceptability custodial violence as a means to solving crime problem. It was found that some influential and powerful people in the society instigate the police to use torture as a means to control crime. However, majority of the people do not subscribe police torture thus this assumption is partially true.

The six assumption was that Impunity as legal instruments provides shield for guilty police officials responsible for custodial crimes. It is because the mechanisms and systems are weak to take stringent action against accused police personnel and kind of impunity to them which breed the crimes in police custody. The departmental proceedings and judicial process were found eyewash against guilty police personnel for custodial crimes and the assumption found true (True).

**Recommendations:**

The following recommendations evolved from the findings of the study:

2. Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006 which is already pending in the Parliament. This will provide institutional mechanisms for victim’s participation in the inquiry, investigation and trial stages to ensure their rights to know, fair justice right and rehabilitation as well as safety and security for victims of custodial crimes.
3. Various police related policies such as Police Modernisation Scheme, Model Police Act, 2006 and National Policy on Criminal Justice System should be modified to ensure full participation of victims of custodial crimes in justice delivery.

4. Indian council of Medial Research and National Council of Rehabilitation should ensure that subject on Torture and its causes and consequences to be included in the curricula of Medical and Rehabilitation education respectively.

5. The Government of Uttar Pradesh should enact the Uttar Pradesh Police Act and spell out the role of police in the changing society and accountability to people at large.

6. The State Government should increase the financial support to the dieting amount for detainee in police custody (as recommended by NHRC Rs. 16 per diet).

7. The Government of Uttar Pradesh should set up “District Complaint Authority” including academicians, social workers, human rights activists, medical officials and journalists etc (as recommended by the National Human Rights Commission).

8. The Government of Uttar Pradesh should provide compensation packages to the victims of custodial crime and life insurance policy for next –of –kins and extend mental health for programme for community.

9. Judicial Inquiry in custodial crimes cases should ensure full participation of victims and witnesses apart from others.

10. The Police Training Academy and Schools should initiate human rights education and training program on custody management for lower level police functionaries such constable and constables. This aside, human rights based interrogation and investigation skills shall be imparted to the Sub-Inspector trainee with latest development of custodial jurisprudence.

11. The District Police Administration should install CCTV camera in all police lock-ups and interrogation rooms as part of ongoing police modernization scheme.

12. Human Rights Court should be constituted in all the districts. These courts shall be mandated for speedy trial of custodial deaths cases in police custody beside others.
13. The district administration should encourage local NGOs and media for research, documentation and monitoring custodial crimes including rehabilitation of victims. Creating more open environment and a human right culture at the police station level, students of social work, law and medial science should encouraged in their concurrent field work (two days in a week).

14. The District Legal Aid Authority in collaboration with BSNL shall start a Helpline for providing free legal aid to the person in detention or lock up. The district administration should provide National Human Rights Commission’s instructions to the medical officers engaged in post-mortem examination of custodial deaths cases.

15. The post-mortem of persons died in police custody shall be conducted by a panel of doctors (not by a single doctor) appointed by District Magistrate in consultation with Chief Medical Officer.

16. The functionaries of Local self bodies and Panchayati Raj institutions should be sanitization of human rights education in general and custodial jurisprudence in particular.

17. Civil Society Interface with Police shall be enhanced for a transparent, accountable and community oriented police system.

18. The Media should dedicate a column on human rights at the front page of the daily newspapers and also continue monitor the cases of custodial crimes in all steps. There is a strong need to highlight the plight of the victims and witnesses in access to justice.

19. The Non-government organizations should take up the issue of custodial violence and human rights and reach out to the victim’s families. The NGO should organize workshops on right to information with the police department and local people to ensure transparency in the system and also as one of the anti-corruption strategy.

20. The academic institutions should undertake research studies on various aspects of custodial justice including plight of victims of custodial crimes.