CHAPTER- 3

CONCEPT OF CUSTODIAL VIOLENCE

3.1 INTRODUCTION

Whatever views one holds about the penal laws, no one will question its importance to society. This is the Law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy.¹

Criminal Law is absolutely essential in a society for maintaining law and order. Criminal Law has to be strong enough both in its contents as well as in its implementation, without being oppressive. This quality is needed in all branches of law but is too crucial in criminal law since the stakes involved are exceptionally high in terms of social injuries of various kinds.² When the rule of law collapses, it is replaced by Matsyanyaya which means the law of jungle. Matsyanyaya means a state of affairs where the big fish devours the smaller one.³

The Primary purpose or function of the criminal law is to maintain security and stability. Bentham defines security, as the paramount end of law, in terms of expectation. Without law, there is no security and without security the values of substances abundance and equality can’t be pursued through Law.⁴ The Criminal Law however, differs from other branches of law in that a conviction involves censures and it employs stigmatic punishment against those who violates its commands. It attempts to reflect those fundamental social values expressing the way we live and then uses this ‘big stick’ of punishment as a means of reinforcing those values and securing compliance

therewith. In this way, it seeks to protect not only the individual, but also the very structure and fabric of society. Existence and function of society ultimately rest on the efficacy of criminal norm. Function of law is to balance the various interests of society with minimum friction and waste. Society has interest on claim over the general security of its members. It is an interest in the general safety, long recognized legally in the maxim that the safety of the people is the highest law.\(^5\)

Friedman has listed five functions of a State on the basis of its activities. These are, as protector, as provider, as entrepreneur, as economic controller and lastly, as an arbitrator. Out of these, State as protector is the foremost function to be performed.\(^6\) Whereas Joseph Raz has reduced primary function of law to four of which criminal law promotes desirable behavior of human being and prevents undesirable behavior and according to him this function is the most basic and elementary that the law performs.\(^7\)

It was thought that traditional function was the only legitimate function of state which was based on the doctrine of Police State which no more holds the truth. Criminal Law today insists to protect the primary rights of persons against any kind of intentional invasion by others.

### 3.2 PRIMARY RIGHTS OF A PERSON

Macklin Fleming listed the following as the primary rights of a person\(^8\):

1. Every person has a right to life.
2. Every person has a right to inviolability of his or her body.
3. Every person has a right to freedom of movements.
4. Every person has right to security of person.
5. Every person has a right to security of habitation.

\(^8\) Macklin Fleming, *Of Crimes and Rights* (1978) p.84.
vi) Every person has a right to security and enjoyment of property.

The Central core of criminal law is rights of persons and not rights of social order, or welfare of criminal. The need for government arises from man’s need for protection of life, liberty and property. Government acts as a watchdog in discharging its primary obligation of protecting rights of persons whenever it is infringed. This function of government has been recognized by divergent authors like Mill and Stephen, who both agree that origination of effective government, takes priority over liberty in creation of civilized society, because liberty can’t exist without the protection of effective government.9

Another function of criminal law is protection of its member’s right known as civil rights or political rights. These are the safeguards made available against their own regime which has the responsibility of protecting primary rights of its people. The purpose or object of human rights is to keep the authority within their limitation and not to cross the ‘Laxman Rekha’ (the boundary line). The devisers are used by the criminal law to prohibit certain human conduct which invades the rights of others, through established enforcing machinery which is vested with well-defined power to adjudicate the guilt and impose punishment in a fair and just manner. The purpose of criminal law is to express a found social condemnation of forbidden conduct, buttressed by sanctions calculated to prevent it.10

The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India’s rich legacy of historical tradition and culture. The truth is that what the West has discovered about human rights now, India had embedded the same in its deep-rooted traditions since time immemorial.11

In tandem with the Latin phrase “nulla poena sine lege”, a person can be punished for an offence only in accordance with the law. Having understood the term ‘Police’ and the expression ‘Human Rights’, it is necessary to define

the concept of ‘Human Rights Violations in Police Custody’. This concept is known in many ways like police brutality, police torture, police excesses, custodial violence and lock-up crimes. The general meaning attributed to this concept is that people in custody are not being treated with the complete dignity and rights, which the citizens in a model democratic state deserve. The practice of causing degradation to the status of an individual, any physical or mental harassment to him, or any deprivation of his personal liberty or fundamental rights of freedom in police custody can be treated as human rights violations in police custody. But ironically this is considered necessary for law enforcement by police and other investigative agencies of the state and central government.\textsuperscript{12}

3.3 MEANING AND DEFINITION OF POLICE, CUSTODY, CUSTODIAL VIOLENCE AND HUMAN RIGHTS

Violence is a mechanism used to assert one’s will over another in order to prove or feel a sense of power or superiority. It is generally perpetuated by those in power against the powerless. Violence therefore operates as a means to reinforce subordination. When a person is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by Judicial Orders, or having offered himself to the court’s jurisdiction and submitted to its orders by physical presence. This word is of elastic semantics but its core meaning is that the law has taken control of the person.\textsuperscript{13}

Pre-conviction custody is known as under trial custody which is chiefly of two types- police and judicial. In police custody, the suspect is detained in the police lock-up by the investigating agency during the period of investigation which can’t be more than 24 hrs. Any detention beyond this period has to be with the permission of the magistrate and in total it can’t exceed 15 days. In judicial custody there is incarceration of the suspect which is authorized by a magistrate pending investigation or trial in a jail which is distinct from a


\textsuperscript{13} Niranjan Singh \textit{v.} Prabha\textsc{kar} Rajaram Kharote, AIR 1980 SC 785.
police lock-up. The investigating agency can have access to such convict in
the judicial custody only with the special orders of the court only. There is no
statutory upper limit to under trial judicial custody save a provision which is
commonly known as ‘default bail’. The charge sheet has to be filed by the
police and some other agencies who have the power of arrest and investigation
like Narcotics Control Bureau, the Directorate of Enforcement and the Central
Board of Excise and Customs (unless specifically some provision of CrPC has
been ruled out) within 90 days in case the offence is punishable with death,
imprisonment for life or imprisonment for a term of ten years or more and
within 60 days in other cases. If the charge sheet is not submitted within such
stipulated period then the detainee get a right to be released as a matter of
right. But if the charge sheet is submitted within time then the under trial
custody can continue for months and years, despite several judgments calling
for speedy trial. Section 436A of CrPC provides for releasing the under trial
on bail if he has been in the custody for more than half of the maximum period
prescribed as punishment for which his trial is going on. But in post-
conviction custody, the whole term of sentence of imprisonment is to be
served in the jail.

There are other kinds of custody as well such as protective custody,
deportation camps for foreigners whose presence has been declared to be
illegal and military custody. The juveniles are housed by a special order in
protection homes. For destitute women also, protection homes have been
established. Under the Mental Health Act, persons may be committed to
mental hospitals. Military custody is subject to the law of armed forces where
only military personnel can be taken into custody and not the civilians by
them. The paramilitary forces, when they exercise powers of arrest are
required by law to hand over the arrested persons to the police.

The Border Security Force also had some powers of the police like that of
arrest along with the borders but after making arrest were supposed to hand
over the detained to the local police. In November 2010, the Central
Government assigned to the Central Paramilitary Forces, the power of arrest,
search and seizure under the Arms Act and proposed to grant the BSF, full
powers of police in areas affected by Naxalism and insurgency. The constitution of India permits the Central Government to deploy within a State’s territory armed forces or other force ‘in aid of civil power’. The protection against abuse however extends to all custodial situations flowing as it does from the constitutional right to life and due process. Apart from the problem of custody, there is a perennial problem of illegal detention in lock-ups and in undisclosed locations or safe-houses.

3.3.1 DICTIONARY MEANING

_Torture or violence_ in simple words or in a layman’s language means ‘cruelty’, ‘atrocity’, and ‘hurt’ deliberately causing great pain- physical and mental in order to punish or to get information or to forcibly make one to confess to something. According to the dictionary meaning violence means behavior which harms or damages physically and where a great force or energy is used. Torture means the action of causing great pain either as a punishment or to make him/her say or do something. When the violence or the torture goes beyond the tolerable limits of the victim, it leads to death.\(^{14}\)

However, torture has not been defined in the Constitution of India or in other penal laws. The torture of a human being by another human being is essentially an instrument to impose the will of the strong over the weak by suffering. It is a shadow on civilization.\(^{15}\) It is one of the worst crimes in the civilized society, governed by rule of law and poses a serious threat to an orderly society. The word ‘torture’ today has become synonymous with the darker side of human civilization.

The term _custody_ is neither defined in the procedural laws nor in the substantive laws. But it means protective care.\(^{16}\) According to the dictionary meaning custody is the legal right or duty to take care of somebody. It is the state of being guarded or kept in prison temporarily, especially by the police. Police custody does not necessarily mean formal arrest. It may also include some kind of surveillance and restriction on the movement of the person.


concerned by the police. Custody means a state of affair in which the accused can be said to have come into the hands of the police or have been under some form of police surveillance or restriction. Custody means more than possession, it means care. When a judge grants custody over an offender to the correctional authority, he is at once declaring that the correctional authority has power over the offender and that this must be used to promote the health of the offender. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty - an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation, a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking.

Custodial violence means any kind of violence occurring in the custody whether legal or not, which is not warranted by the law of the land. Violence may be subtle or extreme like abusing, emotional or physical violence, thrashing and beating, rape or even death. The nature of custody may be judicial, police or under any institution obliged to take care of the inmates like hospitals, homes etc. or may be in the hands of terrorist organizations or armed groups or insurgents etc. Custodial violence means torture in police or other kind of custody.

3.3.2 DEFINITION UNDER CUSTODIAL CRIMES (PREVENTION, PROTECTION AND COMPENSATION) BILL, 2006

According to Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006, custodial crime means “an offence caused against any arrested person or a person in custody when that person was in the custody of a police

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17 Gurdial Singh v. Emperor, AIR 1932 Lah. 609, p. 611. In fact, actual detention or confinement is not essential, suffice it will be if the accused is submitted to custody by action or by word of the police; N.K. Jain, Custodial Crimes - An Affront To Human Dignity, Human Rights (2000) p. 64.
officer or a public servant who has power under any law to arrest and detain a person in custody during that period.”

3.3.3 THE PREVENTION OF TORTURE BILL, 2010

The bill was introduced in the Lok Sabha as a measure to ratify the UN Convention against Torture (CAT), 1975. The Bill seeks to classify custodial torture as a punishable offence and defines torture as ‘grievous hurt’ or danger to life, limb and health. It provides that complaints of torture must be made within six months of the occurrence and that courts may take cognizance of such complaints only with the prior permission or sanction of the executive government. There are certain drawbacks in the bill like the definition is not in accordance or in consonance with the definition given under CAT and is limited to custodial violence done in order to extract a confession; it doesn’t include mental pain or suffering and many other acts which may constitute as torture otherwise; it also doesn’t provide for minimum punishment to the guilty and doesn’t talk about compensation to the victim and there is no independent agency to deal with and to investigate such complaints of torture.

3.3.4 INTERPRETATION GIVEN BY SUPREME COURT OF INDIA

The Supreme Court of India in its landmark judgments interpreted custodial crimes as a crime occurring during the period when some limitation is placed upon the liberty of the person either directly or indirectly, by the police. It precisely extends the meaning of custodial commission of crimes that it is immaterial whether or not the injury, torture or assault occurs within premises of police station or police post. What really matters is the control of police over the victims. Torture is a wound in the soul so painful that sometimes you can almost touch it, but, it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including you. The detailed interpretations given by the courts regarding the subject are dealt under

chapter seven dealing with judicial approach towards the problem of custodial violence.

3.3.5 SPECIAL RAPPORTEUR ON TORTURE

According to *United Nations Special Rapporteur on Torture* (2008), custodial violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching private parts of a woman, being stripped naked, invasive body searches, insults and humiliations of a sexual nature etc.

People are being brutalized physically and wretched mentally by various organs of the State and Society to achieve one purpose or the other. Violence in three forms—physical, mental and emotional—is the most popular instrument to bend and break the person in custody. There are certain types of treatments which most people will instinctively recognize as being unacceptable. But there are others, however, which may depend on cultural factors. Under international mechanism, there is a need to show that the facts constitute custodial violence or ill treatment in legal sense and not merely in opinion.

Apart from custodial deaths and rapes there are other types of violence also committed in custody against human beings which is nowhere defined and various agencies have no fair and accurate data collection on it.

Custodial offences proceed with the arrest and detention of a person in custody. Custody in its strict sense means care, safety and guardianship. The term police custody denotes surveillance or restriction on the movement of the person arrested or detained fully or partially. The arrest may be legal or illegal, formal or informal by words or actions. Every arrest amounts to custody but not vice-versa. A detainee’s movement, action and even thinking come under the exclusive control of the custodian under whom he or she is. Hence, the personality of an arrested person becomes subordinate to the person under whose custody he or she is placed. The situation of mastery and domination over body and mind generate various types of abuses in custody.
3.3.6 HUMAN RIGHTS AND TORTURE

The expression ‘Human Rights’ has not been specifically defined in any declaration or covenant of the United Nations or in the Constitution of India. But these are generally understood as the rights which are inherent in our nature and without which we can’t live as human beings. We get these rights by merely being born as human beings. Recognition of these natural rights of human beings is as ancient as the human civilization.

The Human Rights trace back to the Magna Carta (1215-AD), the Petition of Rights (1627AD) and the Bill of Rights (1688) in the United Kingdom. The Declaration of Rights of Man (1789) by the French National Assembly influenced the framing of the Constitution of the United States of America and in the 19th century these rights became the basic principles of the constitutional law of modern civilized States.22

The Universal Declaration of Human Rights was unanimously adopted and proclaimed by the United Nations General Assembly on December 10, 1948. For giving legal form to the provisions, the Universal, Social and Cultural Rights came into force on January 3, 1976 and the International Covenant on Civil and Political Rights came into force in March 23, 1976. India was one of the signatories of the Universal Declaration of Human Rights, and acceded to the two International Covenants by depositing the Instrument of Accession on April 10, 1979. The Vienna Declaration and Program of action adopted on June 25, 1993 by the World Conference on human rights declared that “Human Rights and Fundamental Freedoms are the birth right of all human beings”. The human rights are now recognized as the limits to the exercise of power by the State over individuals.23

The origin of police can be traced to the time in the early human history when small nomadic groups sought the help of the strong and dependable man for watch and ward purposes and to guard against the attack of animals and the selfish human beings. As these groups organized themselves into tribes and

settled down in small communities, they began to evolve rules and regulations for the protection of persons and property. Simultaneously, the agency for the enforcement of these tribal laws also originated. Thus, the earliest law enforcement agency was, perhaps, a kind of military police. Policemen have existed since time immemorial and are found almost everywhere in the world. It is unfortunate that the exact details of police organisation in ancient India are not available and so different materials scattered in various scriptures and Shastras are to be stitched together to have a coherent picture of the police system. 24

The term ‘police’ apply to a body of civil officers with responsibility of maintaining law and order, peace, safety of life and property. Police has to prevent, control, and investigate the crimes happening in the society. 25 Sometimes, during natural or man-made emergencies also, police works day and night to assist people in maintaining public order. Formally and officially the role and functions of police are prescribed by the law and the administrative mandate. However people perceive the police role as an all pervasive one. As the most visible aim of state administration, which is available to people around the clock throughout the year, the police is entrusted with many tasks not assigned to them under the law. To perform that, police force invokes the powers vested in them to fight crime and to

24 S.K.Ghosh, *Police in Ferment* (1981) p.19. It has been observed that “even in Biblical times, there were patrols of watchmen which went about the cities. More precisely, the military origin of the police systems can be traced to the Romans. Caesar Augustus, who was the Roman Emperor when Jesus was born, used his soldiers to police Rome. Other nations copied the Roman Military Police System.” There are indications that the ancient civilization of Egypt and Syria had some machinery to enforce their laws for maintaining an orderly social structure. The Persian or Achaemenian Empire under Cyrys and Darius, which is remembered for its human approach to administration, is known to have promulgated the laws through law bearers. In Babylon, about two thousand years before the birth of Christ, effective laws were enacted by the great law –giver, Hammurabi, which could not have been enforced without an efficient police system. The Greeks gave the modern world, basic tenets for many laws. The Spartans are known to have had a good police system. Nothing much is known about the police organisation under the Romans during their early Republican period. There is a mention of “Questern Paraciddi” or trackers of murder, who were evidently policemen of early Rome, but their members were presumably few. Their only obligation seems to be to arrest the accused person and present him before the assembly. During the Augustus rule an organized police system was evolved in the Roman Empire. Augustus created mysteriously large bodies of Vigiles consisting of policemen and firemen. The famous Praetorian Guards consisting of ten thousand men controlled military and Vigiles. The Vigiles kept the Emperor informed about happenings in the domain. In France Charlemagne made his own contribution to Police System by introducing the Gendarmerie who were armed civilians to enforce the laws and keep the king’s peace.

maintain order. To effectively discharge their duties, the help and cooperation
of the general public is required which is possible only when it functions
ethically and lawfully and treats the people with courtesy and dignity. But the
common understanding amongst the general public or the image of the police
is such that people don’t wish to have any contact with the police because the
police to achieve proper law and order situation, many a times, go aboard. In
its zeal to find out the real culprit, it violates the human rights of the people
under their custody. To take a person in custody is to limit his freedom.

3.3.7 INTERNATIONAL CONVENTIONS AGAINST TORTURE

The Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment has defined ‘torture’ as “any act by which severe
pain or suffering, whether physical or mental, is intentionally inflicted on a
person for such purposes as obtaining from him or a third person information
or a confession, punishing him for an act he or a third person has committed or
is suspected of having committed, or intimidating or coercing him or a third
person, or for any reason based on discrimination of any kind, when 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.
It does not include pain or suffering arising only from actions inherent in or
incidental to lawful sanctions.”

The involvement, instigation of or consent or acquiescence of a public official
is mandatory to define torture. According to Article 1(2) of the Convention
against Torture, the involvement of a public official or other person acting in
an official capacity is mandatory, for the definition of torture is without
prejudice to any international instrument or national legislation which does or
may contain provisions of wider application. The definition is broad in scope
as it has taken into consideration the physical as well as mental pain or
suffering of the victim. But the definition explicitly excludes ‘pain or suffering
arising only from inherent or incidental to lawful sanctions’. This exclusion
has created a loophole. Under the Convention ‘torture’ is allowed to continue

26 Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading
Treatment or Punishment.
27 Torture in India, Asian Centre for Human Rights, p.47.
if and as prescribed by the law of the land. It means that the ‘lawful’ torture may continue in the States which are parties to the Convention.\textsuperscript{28}

Custodial violence is a calculated assault on human dignity.\textsuperscript{29} Custodial violence in all forms is on a rise due to various reasons. When a person is arrested and detained in the custody he is subjected to inhumane treatment for the purpose of extracting true and correct information from him. This kind of treatment lowers one’s self esteem and sometimes when the pain becomes unbearable, the arrestee resort to self-killing (suicide) and in many cases the custodians or the protectors kill the inmates in the garb of enforcing law and order.

No violation of any one of the human rights has been the subject of so many conventions and declarations as ‘torture’- which aims at total banning of it in all its forms. But, in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. The flag of humanity must on each such occasion fly half-mast.

This inhumane treatment mostly results in the death of those persons in the custody. When these deaths occur especially in the custody of police, it is only the police who is to be blamed for all of this as it is common that when the death of an arrestee or prisoner occurs, either in the lock up or inside jail, the deceased at the time of his death was under the control of police and jail authorities.\textsuperscript{30}

Custodial violence and custodial deaths are perhaps the worst crimes in a civilized society and is a matter of concern for many reasons. The incidents of custodial deaths and other kinds of atrocities affect the law and order fabric, peace, tranquility and the life pattern of the mainstream population. Police crimes associated with violence dampen the common man’s feeling regarding safety and security of the society. Repeated occurrences of heinous crimes have wider impact in people’s mind. Courts all over the world have upheld the human rights of the accused and observed that the torture of innocent people

\textsuperscript{29} D.K.Basu \textit{v. State of West Bengal}, 1997 Cri LJ 743 SC.
by the custodians of law is inhuman, degrading and barbaric and death in custody is perhaps one of the worst kinds of crime in a civilized society.31

The crisis of custodial aberrations, especially those relating to custodial deaths is indeed a very serious problem confronting not merely the police organizations but the very spirit of democratic living as a whole. It is only fit and proper that such a complex problem merits to be tackled on many fronts. Besides considering the enactment of some of the needed legal changes as well as ensuring administrative improvements and modulations, it is vital that a more effective and intense training schedules informs all professional preparedness of policemen, defensemen, medical personnel as well as those in the judiciary.32

According to the law of the land, custodial violence and death in the lock-ups strike a blow at the very rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Those laws, which hamper the judiciary, should be strictly banned. These violations are committed under the shield of ‘uniform’ and ‘authority’ between the four walls of police station, lock-up and prison, where the victim is totally helpless. The quality of a nation’s civilization can be largely measured by the methods it uses in enforcing criminal law. The situation is aggravated by the fact that the persons who are supposed to be the protectors of the citizens are violating the law.33

In recent years, third degree torture and custodial deaths have become an intrinsic part of police investigations and the injury inflicted on the prisoners is sometimes unbearable. Of course there is no doubt that police has contributed a lot towards the maintenance of public peace and order, in safeguarding the life and liberty and freedoms of its citizens but this does not give them the license to inflict injuries to the people in their custody and violate their fundamental and human rights.34

31 Dr. KVK Santhy, Police Torture: Legal Issues and Remedies-yahoo Mail, 18/07/2012.
Many reports suggest that in 20-30% cases medical personnel in one way or the other are involved in cases of custodial violence. In the diagnosis process, improper reports can make them party to heinous crimes by their act of screening the offender. Their wrong and misleading reports allow the torturers or the abettors of custodial violence to get scot free. They help in devising techniques to inflict torture which is physically not visible. So, the role of a doctor in such scenario is very critical.

Prisoners have human rights and custodial violence is the confession of the failure to do justice to a living man. For a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Death of a person in custody whether of police or judicial or any other institution amounts to custodial death. Police officials are also beneath the rule of law and not above it and can be held responsible for the violation of human rights of a person.\(^{35}\)

In his report to the United Nations Commission on Human Rights in April 2001,\(^{36}\) the Special Rapporteur on Torture,\(^{37}\) Sir Nigel Rodley made the following observations about the situation of torture in India:

\[\textit{While the size and diversity of the country make it difficult to characterize the intensity of the problem all over, it certainly appears that there is a tradition of police brutality and arbitrariness in much of the country, the degree of brutality frequently being sufficiently unrestrained to amount to torture, often with fatal consequences. The brutality is sometimes linked with corruption and extortion and is often deployed in the service of local vested interests, be they economic or official. The use of excessive and indeed unprompted and unjustified force is common, especially in response to protests demanding rights. The persecution of those pursuing complaints against the police is not an infrequent phenomenon. In general, while not absolute, the level of impunity among police and security forces seems sufficiently substantial as to conduce a general sense among such officials that their}\]


\(^{37}\) The Special Rapporteur on Torture Sir Nigel Rodley was appointed by the UN Commission on Human Rights in 1985 to look at issues of torture worldwide.
excesses, especially those committed in the line of duty, will at least be tolerated, if not encouraged.”

India has a record of flagrant violations of rights at every level. It is really unfortunate that, State, supposed to be the guardian and promoter of human rights has become the prime violator. Both the central and state governments are still being condemned by the human rights activists and civil liberty organizations for their negligent attitude towards safeguarding the fundamental freedoms and human dignity. But undermining all these efforts, human rights violations are increasing day by day and life and liberty of the citizens are still being jeopardized by mounting incidents of State violence. Police and other lawfully appointed authorities have a long history of law-breaking. Its record of too little regard for human rights is not a thing of the past and it is flourishing now as ever before. India has a record of flagrant violations of rights at every level.

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Law has always discouraged the acts or omissions which in general can affect in rem and violators have always been punished with strict sanctions but the crime rate is not falling and State is in regular quest to preserve social solidarity and peace in society. Whenever any violence, rape or death occurs in the custody, it raises the public interest and attracts media attention. Men, women and even children are subjected to such custodial crimes. The


magistrate inquest is mandatory for any death of a person in custody to ensure examination of the circumstances leading to death. Beyond magistrate’s inquest and in recent year’s information to Human Right Commissions, however there is no formal public scrutiny of in-prison deaths and under such situation many avoidable factors leading to death remains unexplored.

 Custodial violence and custodial death violates the inherent dignity of a person. It not only humiliates the victim but reduces him to a sub human level. The descent to the sub human level is not only that of the victim but of the perpetrator as well. The victim’s descent can be redeemed but the perpetrator defies redemption. He develops a cynical contempt for the values of the democracy, the laws he is paid to enforce and for the courts to which, he as a witness, is accountable. He becomes impervious to the fact that he is a part of an institutional setup erected for ensuring greater freedom for members to progress towards a meaningful, mature and human society. There are numerous provisions in the Constitution of India and other statutory laws but unfortunately most of the provisions have remained paper tigers without teeth.

 During interrogation the suspects are subjected to merciless beatings with lathis, rifle butts, and whips. Many are kicked, punched and trampled on the ground. A few are stripped and electric shocks or red chili powder is applied to their body including their private parts. Hair is pulled out and the rooms where they are kept under custody are virtual hells filled with screams of damned and shouts and abuses of the tormentors. Violence is used as an independent tool for creating terror in the minds of suspects and the public in general.40

 Violence in custody flouts the basic rights of the citizens recognized by the Constitution of India and is an affront to human dignity. Police excesses and the maltreatment of detainees or under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in ‘khaki’ to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the

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foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequences of heading towards perishing.\textsuperscript{41}

Complaints of police excesses and torture of suspects including children, adults, men and women have been witnessed since long. Instead of seeing a downfall, such complaints have been growing in wider dimensions including torture, violence, assault, force, rape and even deaths in certain cases. There has been an alarming increase in such incidents since last few decades.

The police custody has become a protected place to inflict violence on the inmates which is degrading and inhuman. To put a man in prison and forget his personhood thereafter, to deprive a man of his personal liberty for an arbitrary period without monitoring by the law, to put a man in continued custody unmindful of just, fair and reasonable procedures shake the faith of the rule of law and militate against the mandates of part III of the Constitution.\textsuperscript{42}

Sometimes there has been an uproar against custodial violence by the general public in the form of silent protests, candle march and sometimes even through spontaneous mob-attacks on public property or on police property or on police stations to register their anger or intolerance to such incidents and the electronic media also highlights these issues so that maximum people get the chance to ponder over and react to such incidents and thereby put pressure on the concerned officials and the governments to punish the guilty and if there is any loophole in the implementation of the law, to correct it.

Despite having many laws on the subject, awareness amongst the general public, growth of education and remarkable changes in the society over the years, still the inhuman, illegal acts and violence in custody continue to take place. It is a dark reality on our face which has to be removed, if freedoms or rights to every citizen are to be given in the right spirit of our Constitution. The rights which are inherent to all the citizens should be respected by all whether they are public servants or not and should not be subject to violation in one way or the other. The inalienable rights and inviolable rights are always

\textsuperscript{41} Dr. KVK Santhy, \textit{Police Torture: Legal Issues and Remedies}-yahoo Mail, 18/07/2012.
violated by the authority which ought to protect them i.e. custodian- viz. police, judiciary, jailors, armed forces, care takers of different institutions or homes or other detaining authorities authorized to arrest, detain and interrogate against any offence in question.

Articles 20(3), 21 and 22 of the Constitution of India provides important fundamental rights to the citizens of India like right to life, not to be compelled to be a witness against himself and protection against arrest and detention. Personal liberty is a sacred and cherished right under the Constitution of India. The expression ‘life or personal liberty’ has been held to include the right to live with human dignity and thus, it would also include

43 Article 21 of the Constitution of India – “No person shall be deprived of his life or personal liberty except according to procedure established by law.”
Article 20(3) –“No person accused of any offence shall be compelled to be a witness against himself.”
Article 22-(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
(3) Nothing in clauses (1) and (2) shall apply-
(a) to any person who for the first time being is an enemy alien; or
(b) To any person who is arrested or detained under any law providing for preventive detention.
(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless-
(a) an advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
Provided that nothing in this sub-clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by the parliament under sub-clauses (a) and (b) of clause (7); or
(b) Such person is detained in accordance with the provisions of any law made by parliament under sub-clauses (a) and (b) of clause (7).
(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.
(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.
(7) Parliament may by law prescribe-
(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);
(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
(c) The procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”
within itself a guarantee against torture, custodial violence and assault by the State or its functionaries. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity and there is an inbuilt guarantee against its violation. The community rightly gets disturbed. The cry of justice becomes louder and warrants immediate remedial measures whenever rule of law is not adhered to.\textsuperscript{44}

Custody constitutes the most critical and delicate area of human rights in a civilized society. The prison conditions blatantly infringe upon the basic human rights of the persons who are in the custody whether legal or illegal. Most of the violations of human rights in prisons arise from the excesses perpetrated by the agencies like Police, Directorate of Enforcements, Directorate of Reserve Intelligence, Coastal Guards, Central Reserve Police Force, Border Security Force, Central Security Force, Police Intelligence Agencies, Central Bureau of Intelligence, Traffic Police, Mounted Police and Criminal Investigation Department etc., involved in the administration of justice or prevention of crimes in the society or protection of human rights etc. But they themselves use third degree method against the persons in custody to extract information or confession to solve the mystery or the case.

Since long, physical and mental violence against a person was officially and legally admitted or accepted as a valid or good method of investigation or interrogation in various countries including India. The government as the omnipotent and omnipresent teacher should teach the whole population by its example.\textsuperscript{45} If the government becomes a law breaker, it breeds contempt for law and invites every man to become a law into him.

The agencies in general rely more on fists and torture than on wits or culture.\textsuperscript{46} We have to understand that there is nothing more cowardly and unconscionable than a person in custody being beaten up and there is nothing which inflicts a deeper wound on our constitutional culture than a state official running berserk, regardless of human rights.

\textsuperscript{44} Munshi Singh Gautam v. State of M.P., AIR 2005 SC 402.
\textsuperscript{46} Munish Singh Gautam and Others v. State of Madhya Pradesh, AIR 2005 SC 402.
Former Justice A.N. Mulla of Allahabad High Court once opined that, “there is not a single lawless group in the whole of the country where record of crime comes anywhere near to record of the single organized unit known as the Indian police.”

Various machineries function in order to keep peace and order in the society in their own respective fields according to the provisions of the Constitution of India and according to the mandate, rules and regulations framed by their own bodies which regulate them or according to the law enacted by the Parliament of India or by the respective State legislatures. We have Constitutional safeguards, Jail Manuals, Police Manuals, Criminal Procedure Code, 1973, Civil Procedure Code, 1908, Indian Penal Code, 1860 and Indian Evidence Act, 1861, Universal Declaration of Human Rights, Prohibition of Torture and Other Inhuman or Degrading Treatment and other National and International Conventions which protects the rights of the people under any kind of custody.

### 3.4 PARA-MILITARY FORCES IN HUMAN RIGHTS PROTECTION

Paramilitary Forces refers to three organisations which assist the Indian Armed Forces particularly closely and are led by officers of the Indian Army or Indian Navy. They are: The Assam Rifles, the Special Frontier Force and the Indian Coast Guard. Para military forces like central police organizations have been created to perform certain specific roles. The Paramilitary forces ensure the internal security of the country. Most of these forces generally perform counter-insurgency or anti-terrorist missions. All branches of the PMF function under purview of the Ministry of Home Affairs. Indian Paramilitary forces have several components with different roles. Overall it has a two tier structure, the Central Police Organizations, which forms the first tier, and the second tier known as Central Paramilitary Forces. They have to safeguard the territorial integrity and sovereignty of the country and to maintain internal peace and order. They serve people by fighting against the disruptive elements in the society. But they should not trample upon the human rights and dignity of the people especially under their custody.
3.5 ARMED FORCES AND CUSTODIAL VIOLENCE

Many security legislations also restrict judicial scrutiny. India is one of the few countries whose constitution allows for peacetime preventive detention without the safeguards that are generally considered basic. The ICCPR permits derogation from certain personal liberties during a state of emergency. The government of India has not, however, invoked this privilege, nor could it, as the current internal situation does not meet the standards set forth in article 4 of the convention to justify such a deviation. India’s unjustified deviation is well demonstrated by the continued application of the ‘extraordinary’ Armed Forces (Special Powers) Act, 1958 in some parts of Indian Territory.

The AFSPA contains a blanket protection from prosecution without executive sanction to the paramilitary and military personnel in many parts of India. Besides abridging due process by their express provisions, there is more insidious way in which special laws affect custodial accountability. This is by a discursive management of security by projecting the spectre of a nation in peril. The discourse operates to brutalise the police and also to numb institutional checks on custodial power. Institutional agencies are desensitized as they all become crusaders in the ‘national interest’. The medical officers also who are meant to report on the condition of detainees deliberately hide obvious signs of custodial violence.

It is primarily there to defend the territorial integrity and sovereignty of the nation from external aggression. Army is called upon to maintain peace and harmony and to ensure smooth implementation of the principles of democracy and human rights in the larger interests of the people of India. There has been a constant controversy and debate on whether the Armed Forces Special Powers Act (AFSPA), 1958 be retained or abolished as it gives the army special powers and liberties, such as: arrest and search warrants are not required for any operation, army officers can fire upon and use lethal force on an unlawful assembly of five or more people and for the illegal possession of firearms, if they feel the need, no criminal prosecution is possible against army personnel who have taken action under this Act, unless sanctioned by the central government. Prosecution of armed forces deployed in conflict
situations and the police requires the government’s prior permission under section 197 of the CrPC, 1973 and section 6 of the AFSPA, 1958 as well as under some other laws. Such immunity provisions which protect state actors at the expense of victims would have to go if the Torture Convention were to be ratified.

AFSPA is known to be draconian precisely because of the power they invest the army with in areas of armed conflict. First, the impunity enjoyed by army personnel protects them from the crimes they commit on civilians and the injurious consequences of the crimes. Secondly, the impunity given to the army implies that women in these areas are being denied of any legal redress that might have been available to them under the Indian legal system, however uphill it might be to access those legal remedies and legal protection. Sometimes, proving a case of sexual assault itself becomes the toughest struggle waged by a community. The methods of torture used by the army in interrogation procedures during detention involve brutal sexual violence on men as well as women. It would be hard to estimate how many women have been raped and killed in the name of implementation of this law in Kashmir and northern states.

Violence is widely used with impunity in the north-eastern states. The state of Manipur in particular, is completely militarized. The paramilitary and the army detachments stationed in the state is notorious for the use of torture and violence as the tool for investigation and collection of information and evidences. In particular cases from Manipur involves the Assam rifles’ brutalities.

These ‘exceptions’, whether constitutional, legislative or administrative, reveal a contradiction inherent in the law’s attitude to torture. The complete ban on torture is, thus illusory. The truth about torture is that it is not an exception to the rule; it is sustained and tolerated within the rule itself.
3.6 NHRC AND PROTECTION AGAINST CUSTODIAL VIOLENCE

The National Human Rights Commission is an expression of India’s concern for the protection and promotion of human rights. It came into being on 12 October, 1993. The NHRC of India is an autonomous public body constituted under the Protection of Human Rights Ordinance of 28 September 1993. It was given a statutory basis by the Protection of Human Rights Act, 1993. The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as ‘rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants’. ‘Human Rights’ means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International covenants and enforceable by courts in India. All human beings are born free and equal in dignity and rights known as Human rights, as commonly understood, are the rights that every human being is entitled to enjoy freely irrespective of his religion, race, caste, sex and nationality, etc. Human right means different things to different people. Human Rights are not static. New rights are recognized and enforced from time to time. Only persons fully conversant with the latest development about the expanding horizons of Human Rights can promote their awareness better than others.

NHRC performs functions like proactively or reactively inquiring into violations of human rights or negligence in the prevention of such violation by a public servant; by leave of the court, to intervene in court proceeding relating to human rights to visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations; review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation; review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures; to study treaties
and other international instruments on human rights and make recommendations for their effective implementation; undertake and promote research in the field of human rights; engage in human rights education among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means; encourage the efforts of NGOs and institutions working in the field of human rights; such other function as it may consider it necessary for the protection of human rights. Under the NHRC, the data collection system on human rights has been streamlined and now it is mandatory for all district magistrates and deputy superintendent of police to report directly to the NHRC about the custodial deaths whether natural or unnatural. NHRC is playing a positive role in bringing to light the cases of custodial crimes, punishing the offenders and for giving compensation to the victims and their families.

Death due to torture in custody is murder which should be punishable as such offence under the Indian Penal Code. Corruption, irresponsibility, groups and snobbery are the building blocks of custodial crimes. Wrongful detention without formal arrest, negligence with regard to medication and food for the suspects while in custody are the main motives of mental torture to persons in custody. The right not to be tortured is non-negotiable. It is important to guard people from excesses by the State. If upgrading technique is needed to ensure law and order, it cannot find its solution in degrading human beings. Investigating authorities, too have to learn to respect the dignity and inviolability of human life of others.\(^{47}\) Nevertheless there is a very little evidence of any administrative will to stop such practices.\(^{48}\) Persons who are not formally accused of any offence are also not without any legal remedy against lawful torture or coercion which may be applied to them by any private person or the officers of the State either during investigation or otherwise.

The two legislative devices relating to the domestic enforcement of international humanitarian and human rights law suffer from serious and

debilitating flaws. The Geneva Convention Act, 1960 has a distinct bias towards state-centric, rather than victim-centric, redress. The NHRC, set up under the Protection of Human Rights Act, 1993 has a mere recommendatory role and no mandate to investigate violations by the armed forces. It has earned disapprobation for its uncritical and positive report to the Universal Periodic Review Committee of the UN Human Rights Council on the state of human rights in India. Another concern is NHRC’s proneness to do little more than award interim monetary relief despite having the power to investigate and recommend prosecution of human rights violators and its tendency to dismiss even clear cases of violence and torture.49

A comparison between a criminal and a policeman committing brutality will end where the latter violates the law of the land and tramples upon the human rights of a citizen. The futility of using third degree method is evident from the fact that over the years there has been a steep rise in the criminal activities. It must be understood and remembered that where an innocent person is subjected to custodial violence by the law enforcing agencies or by any other unlawful or illegal group (which is not caught by the concerned officials), he loses faith in the administration of justice. A citizen acquires disdain for law. It is a myth to suppose that crime can be solved if the police subject the suspects to force. Interrogation on scientific lines can be more effective than subjecting a person to physical or mental violence. By torturing, the officials would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it.

3.7 ARMED OPPOSITION GROUPS AND CUSTODIAL VIOLENCE

Under Article 1(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment the involvement of ‘a public official or other person acting in the official capacity’ is a central facet of the definition of torture.

The Committee against Torture in its general comment no. 2 (2007) of 24 January 2008 stated: “the committee has made clear that where state authorities or others acting in official capacity or under color of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by Non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-state officials or private actors consistently with the convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-state actors to commit acts impermissible under the convention with impunity, the State’s indifference or inaction provides a form of encouragement and/or de facto permission.”

In other words, the State is obliged to protect citizens from the abuses of Armed Opposition Groups.

In this context, the State is failing and the failure to hold perpetrators of abuses accountable for their actions whether committed by State, naxalites, terrorists or other armed opposition groups continues to be one of the main human rights issues to be addressed in any meaningful manner.

As with the state, others, including the armed opposition groups, who have been responsible for acts of violence, abuses and deaths, including the police, members of armed opposition groups, have generally enjoyed impunity for their actions.

The NHRC has no mandate to investigate or record violations by military and para military forces. Most credible human rights groups, however, observe the following trends in India: torture is routine against armed opposition groups; torture is integral to counter-insurgency operations conducted by the military; and torture is used routinely in police and other governmental agencies’ detentions. While prison officials apply torture less systematically, their
complicity in prisoner gang violence and the ill treatment implicit in appalling prison conditions are serious violations.50

3.7.1 ARMED OPPOSITION GROUPS’ OBLIGATIONS

The humanitarian law which applies during internal armed conflict gives rise to certain obligations for armed opposition groups. The minimum protection offered by common Article 3 to the four Geneva Conventions of 1949 contains obligations for ‘each party to the conflict’.

Common Article 3 to the Geneva conventions expressly forbids violations against:

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”

It expressly forbids the use of illegal detention, torture and ill treatment like:

a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.

b. Taking of hostages.

c. Outrages upon personal dignity, in particular humiliating and degrading treatment.

These obligations do not depend upon government acceptance of an internal conflict. The armed opposition groups in India have been responsible for torture and violations of other humanitarian laws. Massacres by armed opposition groups often draw national attention. Many of the abuses are committed in relation to parallel structures- the people’s courts and law enforcement activities. These include abuse to the right to life, killing and deaths of abducted individuals, liberty and security (abductions), and physical integrity (ill treatment and torture).

3.8 TORTURE BY NAXALITES

Among all the armed opposition groups in India, the Naxalites or Maoists are probably the worst human rights violators. In blatant disregard for the International humanitarian law, the Maoists continue to kill civilians on the allegation of being ‘police informers’, members of the anti-maoist civilian militia such as “salwa judum” and for not obeying their diktats.

The Maoists have been responsible for brutal killing of their hostages after abduction. Often the hostages are killed by slitting their throats or by beheading. Often these killings are authorized by Maoist ‘people’s courts or jan adalats’. The government has not been able to recognize the true problems for which these people are fighting and also for restricting their activities and bringing them back to the social and economic fabric of India. In the state of Chhattisgarh, the naxalite and anti-naxalite activity has killed hundreds of innocent people. Use of brute force by the state and non-state actors irreparably destroys the social and economic fabric of India. Besides promoting private armed groups, the state has also pressed into use questionable legislations like the Chhattisgarh Special Public Security Act, 2005. The statute is so loosely worded that anyone could be charged for a crime under this law. Many accepted legal norms in criminal law like non-retroactivity is negated in this statute.

Popular culture is rife with instances of the hypocrisy we employ when addressing police brutality. Perhaps we are content to look the other way while our government does what we think, or are told, it must do. We are not overly bothered if violence or torture is hidden or is at most an open secret, and torture remains hidden because we push it down and out of sight rather than confront and discuss it. Popular culture plays an important role in the formation or reinforcement of this attitude. Media reports are also generally trying to buttress the state’s claims of being in war against terrorism and do not meaningfully discuss the political issues underlying terrorism, and instead suggest that Islam or Naxalism is conducive to spawning rabid ideologies and willing martyrs that can only be tackled with extreme measures. The electronic and print media continues to portray coercive interrogation as a necessary, if
deplorable, tool in the fight against terrorist threats generally painted as Pakistani or Muslim. Thus custodial torture is seen as extraordinary and exceptional rather than institutionalized, systematic and banal.\(^5\) The unspoken impunity offered by the system is seen in the struggle waged by victim families in court and in processes which assert the norm but deny the consequence.

**3.9 VARIOUS METHODS OF TORTURE**

Following are the methods of torture still applied by police and other agencies in India\(^2\):

i. Beating on the spine.
ii. Beating with canes on the bare soles of the feet.
iii. Beating with rifle butts.
iv. Burning with lighted cigarettes and candle flames.
v. Causing of death by constant torture.
vii. Denying food, water and sleep and then forcing the victim to drink his own urine.
viii. Extended detention in solitary confinement.
ix. Forcible extraction of teeth.
x. Forcibly lying the victim nude on ice slabs.
xi. Hauling the victim on ‘airplane’ position. Victims hands tied behind the back with a long rope, the end hauled over on pulley, leaving the victim dangling in mid-air swinging.
xii. Ill-treatment and misbehavior with the victims.
xiii. Inserting live electric wire into body crevices.
xiv. Insertion of metal nails under toenails
 xv. Making the victim crouch for hours in ‘Z’ position.
xvi. Mock execution or threat of death.
xvii. Public flogging.
xviii. Severe beating with fist blows, lathi or iron rod.

xix. Slapping with cupped hands on both ears until the victim bleeds and loses consciousness.
xx. Stamping on the bare body with heeled boots.
xxi. Stripping and parading of girls and women in public, commission of rape and ill treatment to them.
xxii. Stripping the victim, blackening face and parading him or her in public.
xxiii. Stabbing out or burning with cigarettes or blown torch.
xxiv. Submersion in water.
xxv. Suffocation.
xxvi. Suspending the victim by his wrists.
xxvii. Threats of releasing police dogs on them.
xxviii. Victim is crushed under heavy rollers.
xxix. Victim is stabbed with sharp instruments.

In a significant development in 1997, the National Crime Records Bureau, Ministry of Home Affairs, Government of India has added a new chapter on ‘custodial crimes’ in its annual publication ‘Crime in India’. The National Human Rights Commission also compiles the data relating to human rights violations in police custody. But the sad part is that the data of different agencies does not match with each other.

There are three essential elements which constitute custodial violence-

1. The infliction of severe mental or physical pain or suffering,
2. By or with the consent or acquiescence of the state authorities,
3. For a specific purposes such as gaining information, punishment or intimidation.\(^53\)

Cruel treatment and inhuman or degrading treatment or punishment are also legal terms which refer to ill-treatment causing varying degree of suffering less severe than in case of torture. Forms of ill treatment others than torture do not have to be inflicted for a specific purpose but there does have to be an intent to expose individuals to conditions which amount to or result in the ill-

\(^{53}\) Dr. Raghunathan Opeh., *Torture* [www.geocities.com/athenes/forum/2088/d_tort.htm](http://www.geocities.com/athenes/forum/2088/d_tort.htm)
treatment. The essential element which constitutes ill-treatment not amounting to torture is international exposure to significant mental or physical pain or suffering and by or with the consent or acquiescence of the state authorities.

To make a distinction between the different forms of ill treatment and assess the degree of suffering involved the international bodies must take the particular circumstances of the case and the characteristics of particular victim into account each time.

All forms of ill-treatment are prohibited under international law which means that even where the treatment is not considered severe enough to amount to torture, the State may well still be found to have violated the prohibition of ill-treatment.

3.9.1 DIFFERENT FORMS OF ILL-TREATMENT

The forms of ill-treatment which have been found to amount to torture, either alone or in combination with other forms of treatment are following:

i. Burring alive
ii. Electric shocks
iii. Falanga
iv. Mock amputations
v. Mock executions
vi. Rape and molestation
vii. Severe beating.

There are examples of many grey areas which do not clearly amount to torture or about which there is still disagreement but which are of great concern to the international community\textsuperscript{54}:

i. Certain aspects of poor prison conditions particularly, if combined.

ii. Corporeal punishment imposed as a judicial penalty.

\textsuperscript{54} Dr. Raghunathan Opeh, \textit{Torture} \url{www.geocities.com/athenes/forum/2088/d_tort.htm}. 

iii. Disappearance, including their effect on close relatives of the disappeared person.

iv. Solitary confinement.

v. Some forms of capital punishment and the death-row phenomenon.

vi. Treatment inflicted on a child which might not be considered torture if inflicted on some adult.

A ‘Culture’ is that particular significant factor which may affect an assessment of the adversity of degree of suffering experienced. It is necessary to keep in mind that different cultures and individuals within a particular culture have different perceptions of what amounts to torture. It can mean, on one hand, that behavior which is thought of as torture by a culture or individual victim and which may not constitute as torture in the eyes of international bodies. On the other hand, it can mean that treatment which is consistently considered by international bodies or community to amount to torture and is not viewed as such by the person who has been subjected to it.

For example, in one country, beating a woman severely may not be considered torture but rather a normal practice, in some other country tearing a woman’s cloth may amount to torture. It may even happen that, the treatment which is considered unlawful at the international level is actually lawful at the national level and vice- versa. The interpretation of what constitutes torture is constantly evolving. This may appear to complicate matters. But in fact, it allows the bodies to be relatively open- minded when assessing forms of ill-treatment which have not previously have been found to amount to torture.

3.10 TYPES OF CUSTODIAL VIOLENCE

There are different methods to bring or commit custodial violence which are applied to bring the desired results by the government agencies.

3.10.1 PSYCHOLOGICAL VIOLENCE

To break the confidence and morale of the victim following methods are used:
a) By Communication techniques in which the victim is given wrong information and is tortured mentally.

b) By compulsion or coercion where the victim is compelled or coerced to perform activities or to witness actions that torture him mentally. The victim is compelled to choose between two alternatives that are equally bad and cause mental torture. Forcing the victim to violate social taboos or forcing to witness torture of other victims etc.

c) By depriving the victim the basic needs like water, food, sleep and toilet facilities which results into disorientation and confusion. The sensory deprivation of light and sound, social deprivation by not allowing the visitors to meet, depriving the following of religious rituals and confining to solitary confinement etc. disorients a victim with reference to time and place.

d) Pharmacological techniques like use of various drugs to facilitate torture of the victim to mask the effect of torture and also as a means of torture.

e) Threats and humiliations which are directed towards persons in custody or their family members or friends.

3.10.2 PHYSICAL VIOLENCE

The methods of physical torture are those which inflict pain, discomfort and dysfunction in different parts of the body. Killing the victim is not the aim of torture. The inflicter of torture also takes care that the victim remains undetected by an ordinary examination. But the torturers cannot be trained to do torture in such a way that their detection becomes impossible. Despite precautions, physical torture always leaves a trail that eventually leads to its discovery. The medical science has progressed so much that even after several years of the incident of torture still the internal injuries can be detected. Following are the methods generally adopted to cause physical violence or torture on the victims:

a) Causing disfiguration and exhaustion.

b) Causing torture to such an extent that the victim feels fear of immediate death.
c) Forcing the victims to sleep on damp floor.

d) Making the children stay naked in extreme cold weather or under the sun in temperature for more than 30 degrees.

e) Scratches and cuts are made on different parts of the body with sharp objects.

f) Severe beatings with sharp objects or forcing the victim to walk bare feet over thorny surface or over glass covered floor.

g) The ligaments in the joints are torn off causing severe pain by twisting and beatings.

h) The victim is suspended by his legs or arms or by his or her hair. It is usually combined with other forms like falanga, electric shock, heat, cold etc.

i) Twisting and pricking with pins, fingers, ears and hair, pulling out the nails, hitting ears with both hands simultaneously to impair their hearing.

j) Use of irritants like chili powder, table salts etc. are applied on delicate parts or on open wounds.

3.10.3 SEXUAL VIOLENCE

Sexual violence has great social and psychological impact in the minds of its victims. It may start with verbal sexual abuse and humiliation targeting victims’ dignity. It results into rape or sodomy. The violators or the perpetrators of this crime keep devising new means and methods according to their own mental aptitude and imagination to break the resistance of the subject quickly as well as to satiate his/her own urges.

Law and order means that the police are empowered to maintain order in the society but it must derive its power from the statutes under which it has been formed. It should not take law into its own hands. It gets its power from the law and in turn has to exercise the same lawfully only and not unlawfully. Police has to balance between the rights of the accused, victim and the
witnesses. Police has to subscribe to the ‘rule of law’ which is paramount to any democracy of the world.

In democracy, charter of police is expanded and included to regulate activities of people under social legislation. While democracy speaks of freedoms, police curtails them which result into the conflicts between the people and the police. Like a clergymen a policeman is expected to be better than his fellow citizens. He is the law in action and the gatekeeper of the criminal justice system. He enjoys discretionary powers in the field whether to set the law in motion or not. He should possess and display the best of human values.

The general public need police to act and never expects them to say ‘no’ and wash off their expectations. Police has to act sympathetically, compassionately, in a civil manner with humane approach. Police stations should be a symbol of ‘instant relief’ to the grievances of the public as they have been appointed to act as uniformed social workers to the needy people. This can be achieved only when the attitude of respect for the dignity of people, understanding of the human rights, strict adherence to rules and regulations etc. is there.

It can be said that custodial violence, rape and death is that timid form of behavior which changes the whole concept of life of the victim and which has been prevalent in India since the ancient and medieval times. It was quiet popular during the British Raj. The physical violence paralyses the bodily simulation of the person and the psychological violence break down the victim’s personality.

There is a great need to make a conscious endeavor towards bringing about the much needed attitudinal change amongst all sections of the society especially the officials of the government. There is a pressing need to create an overall environment in which the officials can perform their duties with a sense of pride and fulfillment without facing any difficulty on account of hurdles – legal, administrative, financial etc. proper training and orientation needs to be imparted so that the aberrations in the forces is lessened.