

## **An Analysis of Custodial Detention, Torture and Deaths in India**

**\*Dr. Keshav Madhav,**

Assistant Professor, School of Law, UPES, DEHRADUN

**\*Dr. Alok Kumar ,**

Associate Professor, Icfai Law School, ICFAI UNIVERSITY JHARKHAND

**\*Ms. Shruti Chaturvedi,**

Assistant Professor, School of Law, UPES, DEHRADUN

**\*Dr. Manisha Madhav,**

Assistant Professor, School of Law, UPES, DEHRADUN

Violence, especially by those persons in authority who have power to keep a person in custody is a great concern of society. The incidence of custodial violence as well as other atrocities affect the law-and-order fabric, peace, tranquility and the life pattern of the mainstream population, repeated occurrence of heinous crime against those people who are in custody have wider impact in people's mind. The victim of these 'violence' are mainly ordinary men and women belonging to the socio-economy disadvantage strata of the society. These who neither have will nor resources to oppose such inhuman treatment meted out to them in custody. They have been deprived of their fundamental right i.e. right to life. The term 'violence' is the state or quality of being violent, excessive unrestrained or unjustified force, injury. The simple definition of violence is behaviour designed to inflict injury on a person or damage to property. However, this definition conceals more than it reveals and explains. In any human society, a physical strike or hurt is understood and accepted as the most obvious expression of violence but this is one of its several forms or faces. Thus, all acts which have anything to do, among others even child labour, bonded labour, practice of unsociability denying minimum wages, physical excesses such as torture, sexual offences i.e. rape or out raging women modesty, are the different form of violence.

***Keywords – Violence; Injury; Peace; Torture; Offences.***

### **CONCEPT, ORIGIN AND GROWTH OF CUSTODIAL VIOLENCE**

Violence is a major worry in society, particularly when it comes from those in positions of authority who can detain someone. The fabric of law and order, tranquilly, and the way of life of the general public are all impacted by the prevalence of custodial violence and other atrocities. Additionally, the frequent commission of horrible crimes against those who are in custody leaves a lasting impression on the public's consciousness. The majority of the victims of this "violence" are regular men and women from the socioeconomically disadvantaged segments of society. those who lack the finances or the resolve to protest the cruel treatment they are receiving while in detention. Their fundamental right, the right to life, has been taken away from them.

### **CONCEPT OF CUSTODIAL VIOLENCE**

The term custodial violence has not been defined under any law. It is a combination of two-words custody and violence. In legal maxim, a law dictionary<sup>1</sup> the word custody has been defined as 'charge' and about a person in imprisonment: judicial or penal safe keeping. As per Chamber Dictionary, the condition of being held by the police, arrest or imprisonment is

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<sup>1</sup> P. Ramanatha Aiyer : The Encyclopaedic Law Dictionary with Legal Maxim (1992): Wadhwa & Company Naghpur India.

called custody.<sup>2</sup> As per Legal Glossary<sup>3</sup> Dictionary, ‘custody is imprisonment, the detaining of a person by virtue of lawful power or authority.

Section 167 of the Code of Criminal Procedure speaks about two types of custody, i.e. Police custody and judicial custody. As per section 167 (1) of Cr. Pc. “The magistrate to whom an accused person is forwarded under this section may whether he has or not has jurisdiction to try the case, from time to time, authorize the detention of the accuse in such custody as he may think fit. Provided that the magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exist for doing so.

So as per section 167 (1) of Cr. Pc. ‘Police custody’ can be granted for a maximum period of fifteen days only. Police custody basically means police remand for the purpose of interrogation. In law actually a police officer has two occasion to keep a person in its custody firstly, from the period when he arrests a person till, he produce the said person in the court i.e. first 24 hours of the arrest of accuse. Secondly, when police get, remand from court after producing the accuse in the court which can be extend up to a maximum period fifteen days, thereafter, a person is sent in judicial custody which in general terms means jail or prison, where an accuse remain in custody till it’s get bail or if convicted and sentenced to jail till the completion of sentence. As per law ‘custody’ of a person beings when he is arrested by the police. As per section 41(1) of Cr. Pc. 1973 any police officer may arrest a person without a warrant from the court on following grounds: -

- (a) Who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, or having been so concerned.
- (b) Who has in his possession without lawful excuse, the burden of proving which excuse shall be on such person, any implement of house breaking; or in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing.
- (c) Who has been proclaimed as an offender either under this code or by order of state government.
- (d) In whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing.
- (e) Who obstruct, a police officer while in execution of his duty, or who has escaped, or attempts to escape, from lawful custody.
- (f) Who is reasonably suspected of being a deserter from any of the Armed Forces of the union.
- (g) Who has been concerned in or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of India which, if committed in India would have been punishable as an offence, and for which he is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in India.
- (h) Who, being a released convict, commits a breach of any rule made under subsection (5) of section 356; or

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<sup>2</sup> Chamber Dictionary: (1983) Allied Publisher p. 330.

<sup>3</sup> Legal Glossary (1988) Ministry of Law and Justice, Govt. of India.

(i) for whose arrest any requisition, whether written or oral has been received from another police office, provided that the requisition specifies the person to be arrested and the offence or other course for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

As per section 41(2) of Cr. Pc. 1973 any officer in charge of a police station may in like manner arrest or caused to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110 of the code of criminal procedure, 1973.

Besides this section 42(1) of Cr. Pc. 1973 says when any person who, in the presence of a police officer, has committed on has been accused of committing a non-cognizable offence refuses on demand of such officer, to give his name his name and residence or gives name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

Another type of custody as mentioned earlier is 'judicial custody' which means sending a person in jail or prison. As per section 3 (1) of 'The Prison Act 1894' 'Prison' means any jail on place used permanently on temporally order the general or special under of a State Government for the detention of prisoners and include all land and building appurtenant there to, but does not include: -

- (a) Any place for the confinement of prisoners who are exclusively in the custody of police: or
- (b) Any place specially appointed by State Government under section 541 of the old criminal Procedure code 1882,
- (c) Any place which has been declared by the State Government by general or special order, to be subsidiary jail.

Further "criminal prisoners" has been defined in 'The Prison Act' 1894 as "any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising criminal jurisdiction or by order of a court martial".

The term 'violence' is the state or quality of being violent, excessive unrestrained or unjustified force, outrage proofreader injury. The simple definition of violence is behaviour designed to inflict injury on a person or damage to property. However, this definition conceals more than it reveals and explains. In any human society, a physical strike or hurt is understood and accepted as the most obvious expression of violence but this is one of its several forms or faces. According to Martine Luthra king, depraving a negro child of decent food and clothing is severe form of violence. Similarly in our country treating a section of our society as untouchable is one of the cruelest forms of violence much more humiliating and destructive of human dignity then even physical assault. Exploitation in any form social or economic is yet another angle of violence. Treating people in a manner which is contrary to the accepted norms of human dignity too is a form of violence. Broadly speaking any act, whether overt on covert, that coerces or causes physical hurt, material loss on mental anguish or which degrades human being or which militates against human rights, dignity and decency should be viewed as an act of violence. Thus, all acts which have anything to do, among others even child labour bonded labour, practice of unsociability denying minimum wages, physical excesses such as torture, sexual offences i.e. rape or out raging women modesty, are the different form of violence. National Human Right Commission in it report has included custodial death, custodial rape, illegal detention, other police excesses, indignity to women & Naxalite violence mainly in the category of violence.

Custodial violence is a term which is used for describing violence committed against a person by a police authority. According to Law Commission of India, crime by a public servant against the arrested or detained person who is in custody amount to custodial violence.<sup>4</sup> According to Dr. S. Subramaniam, "Any use of force threat psychological pressure is termed

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<sup>4</sup> S.K. Ghosh : Politics of Violence (1992), Ashish Publishing, Delhi (India), P-2.

I. Dr. S. Subramaniam: Human Rights International Challenges (2004), Manas Publication, Delhi (India) P-235.

as custodial violence. The term custodial violence is almost synonymous to ‘custodial crime’, is wide enough to take not only crime committed while the arrested person is in police custody but also when he is in the custody of a prison official whether as an under trial or as a convicted person as custodial crime, which really mean cruel inhuman and degrading treatment may take place both at the hand of police while in police custody as well as by the jail official, in charge of the jails. According to Justice B.P. Reddy Custodial violence includes torture, death, rape & excessive beating in police custody.<sup>5</sup>

Custodial violence may be both physical and mental. It may also consist of gross negligence or deliberate inaction. Justice B.P. Reddy in a paper presented in a seminar on custodial crime organized IIHR gave example of custodial crime consist of gross negligence or deliberate inaction i.e. when a person suffer heart-attack in police custody or jail, official known what is happening but do not call for medical help and the man dies. It is a clear case of custodial violence<sup>6</sup> another example i.e. when a person is suffering from high blood pressure or some similar type of disease, almost for which continuous medicine is essential. And he is not allowed to take medicines the men develop serious health problem or dies. This is a case of custodial crime. The fact of this case is recorded in ‘Challa Rama Krishna Reddy vs. State of Andhra Pradesh’<sup>7</sup> where in Hon’ble Supreme Court made the state liable for damages for their gross negligence in protecting the person in custody.

Custodial violence is a generic term, and it includes all and every type of torture, third degree, harassment, brutality, use of force is not warranted by law etc. Custodial violence includes illegal detention, arrest which is wrongful on illegal or on insufficient grounds, using third degree method, on the suspects, humiliating them, using filthy language, not allowing to sleep, extorting confession under pressure planting of evidence, padding up of additional evidence, misuse of the power regarding handcuffing not allowing to meet counsel or family member to accuse, denial of food etc. However, since the torture or third degree is the most common and prominent form of custodial violence by the police. It is necessary to discuss it in detail.

### **Torture: a Naked Display of Custodial Violence**

Torture in layman language means “cruelty” “atrocities” & “hurt” and deliberately causing great pain, physical or mental in order to punish or to get information or to forcible make one confess to something.<sup>8</sup> Legal glossary defines ‘torture’ as “the infliction of excruciating pain”.<sup>9</sup>

Torture commission of India also attempted to define ‘torture’ as ‘pain by which guilty is punished or confession extorted.

It will not be incorrect to state that torture is an integral part of the police work. It is the best method for the police to extort confession and to the authorities to silent the voice of discontent. Therefore, both police as well as prison authorities practice it to fulfill their own objectives.

There are several methods of torture which is used by police or custodian of law like physical beating, denial of food or sleep and sexual abuses and rape, solitary confinement, stamping on the bare body with heeled boots, laying on ice slabs, suspending the victim by his wrists in air etc. and some recently use method is use of chemical, electric shock, beating with stun belt etc.

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<sup>5</sup> Justices B.P. Jeevan Reddy, a paper presented in seminar : “Custodial Crime, An Affront to Human Dignity, Human Right Year Book 2001, Universal Law Publication Pvt. Ltd., New Delhi, India.

<sup>6</sup> Id.

<sup>7</sup> AIR 2000 Supreme Court 2083.

<sup>8</sup> Collins Cobuild : English Language Dictionary (1992) P.1546.

<sup>9</sup> Legal Glossary : Ministry of Law and Justice, Govt. of India, (1988) p. 344.

## ORIGIN AND GROWTH OF CUSTODIAL VIOLENCE

Custodial violence which includes, torture, death and other excesses in police custody or prison is not a new phenomenon which is found in modern world only. It has been since ages. The law enforcement agencies had been practicing this on prisoners, criminals and the wrongdoers. Even in ancient Indian history, we find ruler like ‘Nanad’ Maha Padam in Morya period that put entire family of ‘Chandra Gupta Morya’ into prisons and only as much food was provided to entire family which was sufficient for survival of one person only. Kautilya in Arthashastra speaks about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephant and, bulls cutting of limbs and mutilation etc.<sup>10</sup>

In the Gupta period (A.D. 320-500 A.D.) trial by ordeal was common.<sup>11</sup> In the post Gupta period, torture of prisoners became a method of punishment.<sup>12</sup>

In the Mohammadan period the shariat law was applied to crimes; a thief hands to be cut off; life for life; tooth for tooth was the basic principle of Muslim criminal jurisprudence which is still followed in Islamic country.

The British Raj was also notorious for using violence in police custody. Men, women and children were caught, beaten and tortured to make them confess to crimes which they did not commit. During this period political workers were picked up for questioning and if they did not provide the desired reply they were subjected to torture.<sup>13</sup> The naked lying on ice, the denial of food or insufficient quantity of food, excess physical work and physical beatings were some of the methods employed during British Raj to punish law breakers mostly political prisoners and workers.

One important point which needs to be mentioned is that the perpetrators of atrocities and immoral acts were the servant of the foreign Government. Their judiciary, police, jails and all the laws were made for their own benefit and convenience. But we in independent India following the same model, same penal code without much amendment. Our police system is same which was prevalent during British system. It was introduced by Britishers in the year 1861 primarily to enable their administration to have at their disposal a force at a cheap cost to help them rule the country by suppressing anti governmental forces and guided by such an objective the police became the symbol of colonial repression and were for obvious reason hated by the masses.<sup>14</sup> ‘The Prison Act’, which was passed in 1894, has also remained unchanged. The Act gives vast power to jail officials to punish prisoners if they break jail rule. Probably the mind set of peoples as well as police and rulers i.e. executives both political and bureaucracy has remained same only power has been transformed from foreign ruler to our native ruler.

## REASONS FOR CUSTODIAL VIOLENCE

Custodial violence takes place due to social, psychological, professional and administrative factors sometimes it also takes place due to psychological aberrations of the custodian – sadism, sexual weakness, social hatred, etc.<sup>15</sup> Social factor like acceptance of violence against criminal by society<sup>16</sup>, lack of time for investigation, absence of systematic scientific approach to crime work in investigating officer and legal hurdles like inability to keep a person for longer duration in

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<sup>10</sup> S.K. Gosh: Torture and Rape in Police Custody (An Analysis), 1993 P-15.

<sup>11</sup> Id.

<sup>12</sup> G.P. Sinha: Post Gupta Polity (A.D. 500-750) 1972 P-186.

<sup>13</sup> Parkash Chandra : “Usually unexpectable face of the Indian Police”: The sentinel (Himachal Pradesh) 24, April, 1992.

<sup>14</sup> Dishit, Giri Raj and Aggarwal: “Police & Community” (1993), p. 17.

<sup>15</sup> Supra note 4.

<sup>16</sup> Ibid.

custody for interrogation than 24 hours are such a factors which induce police to keep suspect in 'unofficial custody' which ultimately encourage the police to indulge in custodial violence.<sup>17</sup>

Pressure of work and the deplorable condition of work like long duration of work, add to erratic behavior of custodian of law. A study carried out by National Productivity Council had shown that a policeman has to work sixteen hours a day and seven day a week.<sup>18</sup> Lack of time for investigation also contribute the I.O. to adopt short cut mean such as obtaining confession from accuse by forceful means and most of the time it means use of third degree methods to solve the case. National Police Commission has reported on the basis of survey conducted by it that I.O is able to devote only 37% of his time to investigation work.<sup>19</sup>

Added to this, is the pressure from the public, media and the pressure of superior officers to give quick results, due to this even good investigator like to wrap an investigation quickly by getting the confession from the accuse and want to move on the next case.<sup>20</sup>

Besides above there are some other reasons:<sup>21</sup>

1. They work in abhorrent conditions such as they may be called to duty at any time.
2. Their salaries are meager, living condition bad, and to fulfill their need indulge in corruption.
3. Unwarranted influence by politicians in the police work.
4. Promotion and pasting because of money & influence.

But whatever the causes of the violence by the custodian of law, same cannot be permitted in a civilized society with democratic tradition.

### **SOME RECENT GRUESOME INCIDENTS OF CUSTODIAL VIOLENCE**

Custodial violence is a universal phenomenon and everywhere whether it is U.S.A., U.K. or India, authorities has misused their power to torture the person in custody. The most recent example of custodial torture is in Iraq wherein U.S.A. forces has committed torture against the war prisoners, who were kept in Abu Garib prison. The Times of India quoting a news from New York magazine which has reported the custodial abuse against Iraqi prisoners by USA soldiers. The New York magazine says that it had obtained a 53 pages internal U.S.A. military report which admit Iraqis prisoners faced numerous blatant and wanton criminal abuse by U.S. soldiers including sodomy and beatings. The army report listed abuses such as 'breaking chemical light, and pouring phosphoric liquid on detainees, beating detainees with a broom handle and a chair. Threatening male detainees with rape are some of the methods applied by U.S. studiers on Iraqi prisoners<sup>22</sup>.

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<sup>17</sup> Ibid.

<sup>18</sup> Shankar Sen: "Indian Police Today", (1994) p- 40.

<sup>19</sup> National Police Commission Fourth Report, 1980, p-3.

<sup>20</sup> P.S.Bawa: System of Policing (1995) p-122.

<sup>21</sup> Tanzeem Fatima: Police Atrocities Vis-à-vis Custodial Violence in Indian Perspective, article published in Indian Police Journal, July–Sept, 2003.

<sup>22</sup> Time of India (Delhi edition) May 3, 2004, p-13.

## **A. INCIDENT OF CUSTODIAL VIOLENCE IN U.S.A**

In its report Amnesty International reported following incident of custodial violence.<sup>23</sup>

- (1.) More than 600 foreign nationals were detained indefinitely without charge or trial or access to family members or legal recourse in the U.S. Naval base in Guantanamo Cuba on ground of possible link with Al-Qaida otherwise held in undisclosed location.
- (2.) In September 2003 a police officer from Baybon Texas was charged using unnecessary force against a disabled 59 year old Latvian woman.
- (3.) John Allen Muhammad was given electronic shock with a stun belt in August while in hospital in the custody of the Prince William County Sheriff Dept. Virginia.
- (4.) Larry Forazien died in prison after being repeatedly hit with a stun gun.
- (5.) Florida medical report confirmed that police used pepper spray which had contributed to the death in April of a 21-year-old person.
- (6.) A lawsuit was filed against the Florida prison authorities using spray with pepper & tear gas causing breathing difficulties, burning & skin blistering.

## **B. U.K.**

In its report 2004 Amnesty International has reported 94 people committed suicide in prison in U.K.<sup>24</sup>

## **C. India**

One Rajan Sharma was lifted by police for allegation of theft on 6<sup>th</sup> July 2004, he died in the police station on the same day due to the use of third degree method by the Sadar Thana Police of Meerut, U.P. On the protest of family members, seven police officers were suspended.<sup>25</sup>

In another shameful incident police of PS Punjabi Bagh, Delhi, Police picked up on 23 Oct, 2003 one Sushil Kumar for allegation of assisting the gambler in running away from police, he was brutally beaten up and in the police custody he died, his dead body was thrown outside his house, but despite this culprit police officer were not arrested by the police and were arrested only on the direction of High Court.<sup>26</sup>

In Bombay police picked up a person for allegedly involved in Ghatkoper bomb blast case, later on police claimed that he had ran away from police custody, he was not found, his relatives filed a rate petition in the Bombay High Court and on the direction of the Hon'ble High Court investigation of case was transferred to CBI & Bombay Police Sub-Inspector Satish Vaje was arrested by the CBI in this case.<sup>27</sup>

The Police Blinding of 33 person in Bhagalpur, Bihar and Maya Tyagi case in Baghpat, Meerut, Uttar Pradesh caused a nationwide outcry against police atrocities in police custody. The Baghpat incident commonly known as "Maya Tyagi"

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<sup>23</sup> <http://web/amestyorg/usareport2004/jobsummary> visited on 10:41 A.M.

<sup>24</sup> <http://web.amnesty.org/ukreprot.2004> visited at 10:49 A.M. on 17 June 2004.

<sup>25</sup> Navbharat Times, (Delhi edition) July, 8, 2004

<sup>26</sup> Times of India: (Delhi edition) 1 May 2004.

<sup>27</sup> Times of India: (Delhi edition), 1 May 2004

case which occurred on June 18, 1980 remains a slur on functioning of the police. More shocking in this case was that attempts were made by the police leadership at every level to protect the guilty police officials. The Brief facts of this case was that the women Maya Tyagi was going to attend a marriage party along with her husband and his close friend. Their car developed trouble at Sapal Pattil, a village Near Bagpat. When male members were not near the car a Sub-Inspector and head constable appeared on the spot in plain clothes and made obscene gesture. She protested against police behaviour, her husband in meanwhile and friend came to her resume & protested. More policemen came on spot killed her husband Ishwar Tyagi and two others on the spot. Maya was dragged out and paraded naked to the police station. When citizen of locality strongly protested the police action police concocted a false story that they were docaits.<sup>28</sup>

In Bhagalpur blinding case, 33 persons were blinded by the police in their custody and the youngest was 16-year-old boy, who were blinded by the police with thick needles and acid. One victim Suresh Jha was blinded on the behest of landlords for refusing to work for low wages. In this case a police sub-Inspector and eight landlords were convicted in 1984 for a criminal conspiracy to blind them.<sup>29</sup>

## CONCLUSION

So after going through all the discussion, it can be said that use of violence by custodians of law, particularly by police and prison authorities, is a fact which cannot be denied. It is also a fact that such incidences are on rising and the number of such incidences are increasing every year. Further it is a fact that existing penal law and other statutory provisions are not enough to control this heinous crime. Judicial response as far as providing compensation to the victims is concerned is quite encouraging but when it comes to giving punishment to the offenders, their approach is soft. So, what is required is change at every level. However, it can be hoped that in near future they will work more efficiently using scientific methods & modern technique to curb the crime and control the prisoners. Further the public pressure due to media exposure will be so much that it would be very difficult for anyone to avoid punishment in case of violation of rights of human being in custody, therefore they would be forced to mend their ways this will surely bring down the custodial death rate up to a great extent.

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<sup>28</sup> S.K Gosh: Torture and Rape in Policy Custody, (1993) Asish Publishing House, New Delhi, P-29.  
<sup>29</sup> Ibid.