

# CUSTODIAL VIOLENCE: CAUSES, CONSEQUENCES AND PREVENTIVE MEASURES.

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## ABSTRACT

*Custodial violence includes various kinds of torture that a person in prison, police custody as well as judicial custody undergoes due to various reasons. The present study deals with understanding the root cause which lead to custodial violence and the various ways through which this grave injustice can be prevented. In developing country like India custodial violence seems to be serious problem as majority of the population is still uneducated when it comes to various laws that protect their basic human rights. Even though the establishment of National Human Rights Commission has provided a mechanism which can be easily accessed by the poor and helpless victims to get quick relief yet many cases of custodial violence has not been reported due to lack of awareness amongst the major population. The law enforcement agencies are expected to maintain the law and order and protect the rights of individuals but police brutality against under trials, suspects and convicts have been increasing at a shocking rate. In spite of various International conventions, constitutional and statutory provisions protection available to such victims, their inhuman treatment has not come to an end. In this context, a study that focuses on raising the awareness among the common man of the rights remedies available to the victims of custodial violence is the need of the hour. This study seeks to conduct a doctrinal study on various cases on custodial violence in India and to collect the information and try to figure out the total quantity of crime within the country.*

Keywords: Custodial Violence, Crime, Causes, Prevention, Consequences, Torture, Police Custody.

## INTRODUCTION

The term violence means to torture, hurt, abuse, use physical force in order to cause or intended to cause injury. Sometimes the hurt inflicted through violence maybe psychological as well. According to dictionary meaning, violence is defined as a behavior which physically harms or damages a person with massive amount of force or energy. Such torture or infliction of immense pain to a body or mind is done in order to extract some information or forcefully make a person confess and an offence or simply to punish the person. When the torture reaches an unbearable extent it might lead to custodial death. The term custody has not been defined in any of the substantive law as well as procedural laws although it may be simply defined as guardianship and protective care. The dictionary meaning of custody means the legal duty or right to take care of some person. Here it means the state of being kept under guardianship generally of prison authorities and during such period the person's freedom of movement is denied. Custody includes police custody as well as judicial custody. Custodial means any kind of violence or torture occurring in

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police or judicial custody, which is in violation of the law in force. Violence may be mild or extreme like abusing, mental torture, beating, rape or even death.<sup>2</sup>

## OBJECTIVE

This research paper throws light on the nature, extent, causes, consequences and means of prevention of custodial violence which is direct violation of the basic human rights of the Prisoners. The study also involves research on various rights available to the Prisoners under the laws currently in force in India which protects them from custodial crimes and also on the important of creating awareness of such law and rights among common men. The study is concluded by recommendation of measures which could possibly prevent and reduce the volume of custodial violence.

## NATURE OF CUSTODIAL VIOLENCE

Custodial violence involves some kind of torture inflicted on a person. The internationally accepted definition of torture states:

“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 for a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having , or intimidating or coercing him or 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.”<sup>3</sup>

Custodial violence can be classified into physical, psychological and sexual torture.

### *Physical torture*

Methods of physical torture includes punching, slapping, beating, forced body positions, stretching limbs, suspension, constraint of movement, burning with cigarettes and caustic substance, cutting with sharp instruments, electric shocks, mutilating body parts, chemical exposures in wounds, dental torture and starvation.<sup>4</sup>

### *Psychological torture*

A person is put through mental torture by threatening to harm or kill the victim or his relatives or friends, forcing him to hear or witness others being tortured, forcing him to harm others, violation of religious beliefs and humiliation.<sup>5</sup>

### *Sexual torture*

Custodial rape is another kind of torture faced by victims. Custodial rape can be defined as rape perpetrated in state owned institutions like prisons or jails by person in charge of such institution. Other

<sup>2</sup>Available at : [www.legalservicesindia.com/article/1893/custodial-violence-in-india.html](http://www.legalservicesindia.com/article/1893/custodial-violence-in-india.html) (Last visited on April 7, 2019).

<sup>3</sup>Article 1, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>4</sup>Nithya Ramakrishnan, *In custody: Law, Impunity and Prisoner Abuse in South Asia 5* ( Sage Publication Ltd., 2013).

<sup>5</sup> *Ibid.*

forms of sexual torture include sexual harassment, forced impregnation and virginity testing.<sup>6</sup>

## CAUSES OF CUSTODIAL VIOLENCE

### *Work stress*

The police authorities work under a lot of stress as they have to handle a lot of cases at the same moment and also under the pressure to finish certain volume of cases within a particular time frame. In our justice system, an accused is presumed to be innocent until and unless he proven guilty for the commission of an offence, beyond reasonable doubts and proving an accused guilty requires evidence against him, which they must collected against the accused. Failure in achieving the results may lead to the officer being transferred, which creates a lot of pressure in the minds of the police officers due to which they Resort to techniques which involve torture against the accused in order to get confession from him. As the accused can be kept custody only for the period of 24 hours within which the police have to obtain a lot of vital information required by the prosecution, they offer new shortcuts during investigation to obtain maximum information.<sup>7</sup>

### *Punitive action by police*

Some police officials believe that punishing the criminals is the only way through which the criminals can be prevented from committing more crimes. They say prisons no more have a deterrent effect on criminals as they remain happy there. They prison officials believe in the efficacy of third degree treatments while dealing with criminals particularly those who have committed serious crimes such as murders and rapes and they think they deserve the Torture.<sup>8</sup>

### *To obtain quick results*

According to the report of National Police Commission, 37% of the time is spent by police on investigation and rest of their time VIP security, law and order duty, court attendance and other work. Hence, the police use violence as a shortcut to obtain quick results during investigation to compete the lack of time.<sup>9</sup>

### *To extract money*

Some greedy policemen misuse their powers to extract money from honest and innocent men by threatening to implicate them in cases such as dacoity as the courts give FIR great importance and the information in FIR can be manipulated by the police officers. The investigating officer you can threaten and even beat him up and put him through various tortures the victim till the time he is ready to pay the money.<sup>10</sup>

### *Inadequate training*

Police officials lack proper training such as knowledge of application of scientific methods in Crime Investigation and interrogation of accused due to which the police end up using often leads to use of

<sup>6</sup> *Ibid.*

<sup>7</sup> Available at: [https://www.academia.edu/9267466/CONCEPT\\_OF\\_CUSTODIAL\\_VIOLENCE\\_AND\\_TYPES\\_OF\\_TORTUE](https://www.academia.edu/9267466/CONCEPT_OF_CUSTODIAL_VIOLENCE_AND_TYPES_OF_TORTUE) (Last visited on April 7, 2019).

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

violence against accused. The police are not equipped with skills required for proper investigation due to which they resort to use of force against the accused to obtain information and confession. They need to be trained in such a manner so that they act polite and respectfully towards the public and abstain from unnecessary brutality and harassment. Police must be imparted with knowledge of human rights which might motivate them to protect the human rights.<sup>11</sup>

#### *Lack of supervision*

The police investigation is not generally supervised by their superior police officers, which gives them a sense of freedom and they think they are immune from actions being taken against them for commission of custodial crimes. They think that they will not be questioned for their acts. Some police officials also often go unpunished due to the lack of evidence against them.<sup>12</sup>

#### *Psychological issues*

The personality of the police officer also plays an important role in determining what kind of approach he might use during the investigation. Investigating officer with sadistic attitude would inflict pain on the victims for his own pleasure and lustful person might abuse his powers and sexually exploit the victim.<sup>13</sup>

### **CONSEQUENCES OF CUSTODIAL VIOLENCE**

*Physical consequences:* physical effects include pain in various parts of the body and swelling which results in the victim not being able to carry out the day to day works which is to be done by him. In middle class families these effects may cause serious financial difficulties.

*Psychological consequences:* post traumatic stress disorder signs and symptoms such as depression, anxiety, flashbacks, nightmares, sleeping problem, phobia and feeling of may prevail among the victims which may prevent them from living a normal life.

*Economic consequences:* The victims of custodial violence have to also take up the burden of the expenses incurred during attending inquiry and investigation. The victim also has to spend a lot of money on fighting the case for his compensation.

*Social consequences:* the victim and his family are generally re- victimized by the society. They may be alienated and treated as criminals, due to which the victims remain withdrawn from social gatherings which may cause further depression.

### **STATISTICS OF CUSTODIAL DEATHS IN INDIA**

The NHRC received 1,616 intimations concerning death in judicial custody, and 146 intimations of death/rape in police custody during the year 2016-17. An intimation of death in para-military/defense forces custody was also reported during the review period. It disposed of 2,194 cases of custodial death. Out of these 2,194 cases, 1,974 cases relate to death in judicial custody, 220 cases of death/rape in police custody and one case of death in the custody of para-military forces. These figures contain cases of

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

previous years as well. <sup>14</sup>

Table showing number of registered cases in NHRC

Financial year	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Death in police encounter.	168	137	188	179	169
Death in police custody	1557	1577	1588	1668	1616
Death in judicial custody	143	140	130	151	145

## PROTECTION OFFERED TO PRISONERS UNDER INDIAN LAWS

### *The Constitution of India*

The Constitution of India does not expressly provide the provisions related to the rights of prisoners but the Articles 14, 19 and 21 are available to the prisoners as well as freemen.<sup>15</sup>

Article 14 of the Constitution of India says that the State shall not deny to any person equality before law or the equal protection of laws within the territory of India. Thus Article 14 contemplated that like should be treated alike, and also provided the concept of reasonable classification. This article is very useful guide and basis for the prison authorities to determine various categories of prisoners and their classifications with the object of reformation.<sup>16</sup>

Article 19 of the Constitution of India guarantees six freedoms to the all citizens of India. Among these freedoms certain freedoms cannot be enjoyed by the prisoners because of the very nature of these freedoms. The convicts by mere reason of their conviction are deprived of some of their fundamental rights such as right to move freely throughout the territory of India or the right to practice a profession.<sup>17</sup>

No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article stipulates two concepts i.e., right to life and principle of liberty. By Article 21 of the Indian Constitution it is clear that it is available not only for free people but also to those people behind the prison.<sup>18</sup>

Article 20- Primarily gives the rights against conviction of offences. Article 20(2) incorporates prohibition against 'double jeopardy', and Art 20(3) protection against 'testimonial compulsion'. Art. 20(2) was not invoked and Supreme Court directed retrial of the accused after their acquittal by the trial court. It is necessary that the first trial should have been conducted before court competent to try the case to attract the provision of Article 20(2).<sup>19</sup> The protection under Article 20(3) is available only against the compulsion

<sup>14</sup> NHRC, Annual report 2016-2017.

<sup>15</sup> T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361.

<sup>16</sup> Nitai Roy Chowdhury, *Indian Prison Laws and Correction of Prisoners 75* (Deep and Deep Publications, New Delhi, 2002).

<sup>17</sup> State of Andhra Pradesh v. Challa Ram Krishna Reddy, AIR 2000 SC 2083.

<sup>18</sup> Article 21, Constitution of India, 1950.

<sup>19</sup> Zahira Habidullah H. Sheikh v. State of Gujarat, 2004 (5) SCC 353.

of accused to give evidence 'against himself', but left to himself he may voluntarily waive his privileges by entering into the witness box or by giving evidence voluntarily on request.<sup>20</sup>

Article 21 casts an obligation upon the State to preserve the life of every person, whether innocent or guilty.<sup>21</sup>

Following are the rights of prisoners which are implicitly provided under the Article 21 of the Constitution of India:-

- Rights of inmates of protective homes.<sup>22</sup>
- Right to free legal aid.<sup>23</sup>
- Right to speedy trial.<sup>24</sup>
- Right against cruel and unusual punishment.<sup>25</sup>
- Right to fair trial.<sup>26</sup>
- Right against custodial violence and death in police lock-ups or encounters.<sup>27</sup>
- Right to live with human dignity.<sup>28</sup>
- Right to meet friends and consult lawyer.<sup>29</sup>
- Rights against solitary confinement, handcuffing & bar fetters and protection from torture.<sup>30</sup>
- Right to reasonable wages in prison.<sup>31</sup>
- Right to compensation for wrongful arrest, detention and torture.<sup>32</sup>
- Right against delayed execution.<sup>33</sup>
- Right against public hanging.<sup>34</sup>
- Right of release and rehabilitation of bonded labour.<sup>35</sup>

It is significant to note that an under trial or convicted prisoner cannot be subjected to a physical or mental restraint- a) which is not warranted by the punishment awarded by the court, or b) which is in excess of the requirements of prisoners discipline, or c) which constitutes human degradation.<sup>36</sup>

<sup>20</sup> Article 20, Constitution of India, 1950.

<sup>21</sup> Paramanand v. Union of India, (1989) 4 SCC 286.

<sup>22</sup> UpendraBaxi v. State of U.P., (1983) 2 SCC 308.

<sup>23</sup> M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544; Article 39-A, Constitution of India.

<sup>24</sup> HussainaraKhattoon v. State of Bihar, (1980) 1 SCC 81.

<sup>25</sup> Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

<sup>26</sup> Rattiram v. State of M.P., (2012) 4 SCC 516.

<sup>27</sup> D.K. Basu v. State of W.B., (1997) 1 SCC 416.

<sup>28</sup> Jeeja Ghosh v. Union of India, (2016) 7 SCC 761.

<sup>29</sup> Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

<sup>30</sup> Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1579.

<sup>31</sup> People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

<sup>32</sup> Rudal Shah v. State of Bihar, AIR 1983 SC 1086; Bhim Singh v. State of J & K, (1985) 4 SCC 677.

<sup>33</sup> T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361.

<sup>34</sup> A.G. of India v. Lachma Devi, AIR 1986 SC 467.

<sup>35</sup> BandhuaMuktiMorcha v. Union of India, AIR 1984 SC 802.

<sup>36</sup> P.M. Bakshi, *The Constitution of India 79* (Universal Law Publishing, New Delhi, 14th ed., 2017).

Article 22 provides few fundamental rights with respect to conviction such as,

1. Being informed the grounds of arrest.
2. To be defended by an advocate of his choice.
3. Be produced before the nearest magistrate within 24 hours of arrest.
4. To be released from detention beyond 24 hours, except by the order of magistrate.

*The Indian Evidence Act, 1872*

A confession made to the police officer cannot be proved against a person accused of any offence.<sup>37</sup>

A confession made by a person in police custody shall not be proved against such person, unless it is made in the immediate presence of a magistrate.<sup>38</sup>This spirit of the provision is to prevent the police from forcefully obtaining confession from the accused.

*The Code of Criminal Procedure, 1973*

Section 46 and 49 of the Code protect those under custody from torture who are not accused of an offence punishable with death or imprisonment for life.

After the amendment of 2005, Section 46(4) of CrPC provides that no woman can be arrested after sunset and before sunrise, except in exceptional circumstances where the woman police officer may do so after obtaining written permission of the judicial Magistrate concerned.

Section 49 of CrPC is another important safeguard on power of arrest. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape; in other words he must not be subjected to torture or violence in the name of effecting arrest.

*The Protection of Human Rights Act, 1993*

The preamble of Human rights Act, 1993 was passed by the parliament to meet the national and international demand to have a law to protect human rights and punish violations of the same. Meaning of human rights is provided in Sec. 2(1) (d) of the Protection of Human Rights Act. Changing social conditions and emerging trends in the nature of crime and violence called for providing efficient and effective methods for dealing with the situation bringing in transparency and greater accountability. That is perhaps the reason why the Supreme Court has termed the National Commission as a unique expert body.

## **MEASURES FOR PREVENTION OF CUSTODIAL VIOLENCE IN POLICE PROCESS<sup>39</sup>**

Creating awareness: Creating awareness about Prisoners rights in a community which is complex and textured as our Indian society, can be a challenging task but is extremely important. The task also requires commitment and determination and all the sections of the society have a crucial role to play to cause the human rights to flourish against the odds of social Injustice.

There are a number of laws to safeguard the rights of prisoners and prevent custodial violence but only the

<sup>37</sup> Sections 25, The Indian Evidence Act, 1872.

<sup>38</sup> Sections 26, The Indian Evidence Act, 1872.

<sup>39</sup> M.R.Biju, *Human Rights in a developing society* 131 (A Mittal Publication, New Delhi, 1<sup>st</sup> edn., 2005).

presence of these enacted laws is not sufficient for them to be implemented successfully as majority of the population is unaware of their own rights. Therefore spreading awareness among the common man is vital for or proper implementation of these laws.

The media should focus on spreading awareness about such laws because it is the easiest means through which illiterate people can gain knowledge about their rights.

Students and NGOs must also involved in conducting awareness campaigns in different places about the rights of citizens and the legislature was enacted by the state for the protection of people. By the way knowledge can be spread to the maximum amount of people.

Police training: The police and security forces must be trained to uphold the human rights and should work towards reformation of police, in order to bring a change in the mind set an approach of police personnel in regard to investigations so that they respect and recognize the human rights.

Supervision: the police officials in involved in investigation must be constantly supervised by their superior officers and monitor them to prevent custodial violence.

Use of scientific techniques: video cameras must be used to ensure constant surveillance of the accused in custody and modern methods of Record maintenance must be used to prevent manipulation of data in regards to FIR.

Speedy action: complaints of custodial violence against police should be investigated by other investigating agencies such as CBI or Human Rights Commission followed by prosecution, whenever needed.

Regular counseling: The nature of police work causes them great physical and psychological strain which affects the personality and their personal relationships. The state must take measures to make sure that the officers are not psychologically impaired due to professional stress

*Other measure to prevent custodial violence:*

- An official policy must be adopted to protect the human rights of Prisoners
- All the allegations of torture must be investigated without any partiality and without being biased
- The officer involved in Commission of custodial violence must be made accountable and be brought to Justice. Murder case should be booked against police officer who use third degree torture on detainees and cause their death.
- Officers involved in such inhuman and cruel custodial crimes must be dismissed from police service and all monetary benefits due to them must be forfeited.
- The detainees must be made aware of their rights in detail.
- The causes of torture must be investigated and preventive measures must be taken accordingly.
- India should strengthen its commitment towards International conventions.
- The safeguards against torture must be strengthened.

## CONCLUSION

The contemporary scenario in India is dreadful with constant increase in reported cases of custodial violence. It is ironic that the law enforcing agency which was established to protect the rights of people,

are being the ones who take the basic human rights as granted and commit acts that violate such rights. If the enforcers of the law turn into lawbreakers, it amounts to contempt for law itself. The social contract implicit in the organization of the state is broken.

Therefore, custodial violence must be made as a punishable offence by a special law enacted for the same purpose. The awareness must be created among the public for proper enforcement of constitutional and statutory provisions protecting the rights of prisoners and the rules established by the Supreme Court. The police atrocities must be constantly monitored by the public including NGOs and media in order to prevent the occurrence of more of such custodial crimes.

The preventive measures suggested require a lot of dedication and effort to improve the matters. Torture in police custody is worst affront to human dignity. Officer with lawful authority should not take it as permit to break the law on their own will.

