

**FROM JUDICIAL TO LEGISLATIVE MEASURES TAKEN TO PREVENT CUSTODIAL  
VIOLENCE**

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**ABSTRACT**

*The different forms of torture that a person who is in jail, police custody, or court custody experiences for a variety of reasons is referred to as "custodial violence." The goal of the current investigation is to identify the source, the different factors that contribute to custody abuse and the remedies available for this serious injustice prevented. Custodial violence appears to be a severe issue in emerging nations like India since the majority of People still don't know much about the several laws that safeguard their fundamental human rights. Despite the fact that the National Human Rights Commission's formation has established a framework wherein can be readily acquired by the impoverished and defenceless victims, yet many cases of custodial violence Due to ignorance, there have been no reports of violence. Police violence against suspects, those under investigation, and people who have been convicted has been rising at an alarming rate, despite expectations that law enforcement organisations will uphold law and order and defend people's rights. Even though these victims are protected by several international agreements, constitutional protections, and legislative restrictions, their inhumane treatment continues. In this situation, a research that aims to educate the general public on the legal options open to victims of custodial abuse is urgently needed. This research aims to gather data and attempt to estimate the total amount of crime in the nation while also doing a doctrinal analysis of various examples of custodial brutality in India.*

**Keywords:** Custodial Violence, Human Rights, Custodial Brutality, Post-Mortem Report

**INTRODUCTION**

Police and court custody are the two main types of custody where violence occurs. Other types of custody-related violence include rape and torture in addition to death. Violence in prisons and jails is not a new occurrence. "To prevent police officers from using torture to get confessions or other information, Sections 330, 331 and 348 of the IPC, Sections 25 and 26 of the Indian Evidence Act, Section 76 of the Criminal Procedure Code, and Section 29 of the Police Act, 1861 were passed."<sup>1</sup>

It's essential to remember that despite these legal protections, violence against people in custody still happens. The state governments are required to notify the Commission of any case of rape or death in custody within 24 hours of the incidence. "A post-mortem report, a videography report on the post-mortem examination, an inquest report, and a magisterial investigation"<sup>2</sup> concerning fatalities occur due to disease and old age should be provided after information on custodial deaths. The causes of fatalities while being held by the police include torture, disease, suicide, or accidents. The number of prisoners in a particular period is directly correlated with the number of deaths in judicial custody. The issue of overcrowding is one of the severe issues that Indian jails are now confronting, as mentioned in the May 2004 issue of Human Touch. Due of overcrowding, essential services including medical facilities and food quality suffer.

Better custodial administration may be considered to be urgently necessary given the seriousness of the problem. Police officers play a significant role in this. They ought to receive training in topics like jail administration and human rights. Inmates should have access to enough female and medical staff. According to the NHRC, the State Government-established Human Rights Cells should take a more active part in enhancing prison conditions, including the provision of medical and associated amenities. State governments ought to address this issue right away.

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<sup>1</sup> Manmeet singh, *custodial violence in india*, LEGAL SERVICE INDIA,  
<http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html>

<sup>2</sup> Sambit rath, *custodial violence in india*, I BLOG PLEADERS, <https://blog.ipleaders.in/custodial-violence/>

### **STATEMENT OF PROBLEM**

The main problem here lies in the increasing cases of custodial violence in India. Custodial violence refers to the violence faced by the prisoners under the authority of the police officers in their custody. It has many negative effects and leads to various social and mental evils in the society. So an inhuman feature that comes out of a perverted desire to cause agony when there is no potential of any response; a mindless demonstration of dominance and physical force" may be used to characterise custodial violence.

### **OBJECTIVE OF STUDY**

This research paper tries to understand the problem of custodial violence and try to figure out the causes due to which it is increasing in the current time. Also how this practice affects police officers, the prisoners and how it has a consequence in the general day to day life of the common man of the country. Various measures to prevent it or more specifically control it is also been discussed here.

### **REVIEW OF LITERATURE**

1. Chauhan, P., 2020. Making the 'Invisible' visible: Custodial violence and the civil liberties-democratic rights movement in India. *International Journal of Law, Crime and Justice*, 62, p.100375.
2. Haider, K., 2021. A Socio-Legal Study of Custodial Violence in India.
3. Sinha, A., 2020. Custodial Violence And Human Rights: Constitutional Perspective. *Ilkogretim Online*, 19(2), pp.2195-2205.
4. Chatterjee, I., CUSTODIAL VIOLENCE AND THE LAW.
5. Rao, P. and Deva, S., 2016. Agonizing Domain of Custodial Violence. *Human Rights Law Journal (NLUO)*.

### **RESEARCH METHODOLOGY**

The project is of non-empirical in nature. The project employs secondary sources for the fulfillment of objectives of the study. The project is of descriptive and analytical in nature and various literature have been covered from Journals, News Websites, E-books, Various published reports, Various published researches, etc.

### **MEANING**

The term "custodial violence" has no legal definition. The terms "violence" and "custody" are combined. The word "custody" implies protection and oversight. It doesn't have any unfavourable side effects when being held captive, even when used to signify an arrest or incarceration. In a legal dictionary, the terms "charge" and "judicial or penal safekeeping" are used to describe someone who is being held in custody. According to Chamber Dictionary, being in custody refers to being arrested, detained by the police, or locked up. According to the Legal Glossary Dictionary, custody refers to the confinement of a person because of a legal right or authority. A police officer has two legal reasons to detain someone in their custody. The first is during the first 24 hours after an arrest, or from the time the individual is taken into custody until they are brought before the court. "Second, a person is placed in judicial custody, which generally refers to jail or prison, where they remain until they receive bail or, if convicted and sentenced to jail, until the end of their sentence, if the police receive remand from court after presenting the accuse in court, which can extend up to a maximum period of fifteen days"<sup>3</sup>. According to the law, a person enters "custody" when the police make an arrest.

The definition of "violence" includes the quality or state of being violent, using extreme force without cause or constraint, and inflicting perforate injuries. Violence has been described as the intentional use of force by one person against another with the intent to harm that person. The harm might be psychological, physical, or other. Violence may be simply defined as behaviour intended to cause harm to a person or damage to property. Custodial violence is a term used to indicate violence committed against a person by a police official.

<sup>3</sup> Haider, K., 2021. A Socio-Legal Study of Custodial Violence in India.

Custodial violence, according to the Law Commission of India, happens when a public employee violates a person who has been detained or arrested and is in custody.

According to Dr. S. Subramaniam, "Custodial violence is defined as any use of force, threat, or psychological pressure. Custodial violence is defined by Justice B.P. Jeevan Reddy as torture, death, rape, and severe beating in police custody."

Custodial violence continues to be the leading cause of mortality in jails and lock-ups, despite the fact that overcrowding, starvation, unclean conditions, and a lack of medical treatment are some of the reasons of death in police and judicial custody. Custodial violence is a wide word that includes, among other things, all types of torture, third-degree harassment, cruelty, and the use of force without cause. Custodial abuse involves improper detention, third-degree wrongful arrest, humiliation of the suspects, abusive language, stopping them from sleeping, coercing confessions under pressure, padding out extra evidence, and abuse of police authority. However, the most common and pervasive form of police-inflicted assault in prison institutions is third-degree or torture. The persons who are in custody are harmed by police personnel while they are being questioned and investigated. It is even more terrible that the person who is viewed as the inhabitants' protector committed this crime against them. In a free society, it is extremely important to prevent people from being tortured and from police and other law enforcement officials abusing their authority.

Compared to other forms of violence, police aggression against those it is holding is significantly more often. The primary cause of it is that those who are the targets of such violence are powerless to protest it. Police officers fabricate evidence against themselves by using their official position. The majority of the time, a person who passes away while they are in prison is not recorded in the lock-records, up's and the police go to great lengths to either dispose of the body or establish that the individual was arrested before he was released from custody. Due of brotherhood links, every accusation about torture is ignored. "As the police lock-up where most torture or injury occurs is hidden from public view and the witnesses are either policemen or fellow prisoners who are very reluctant to testify as prosecution witnesses out of fear of retaliation by the superior officers of the police, there is no direct evidence to support the charge of torture or causing hurt that results in death."<sup>4</sup>

In India, the police have traditionally been the main state-run agency responsible for maintaining the law. A ruling family or group of families oversaw a State in the early and middle centuries of civilisation. Each monarch occasionally felt forced to proclaim the rules of the state. The police upheld the law of the monarch, effectively ensuring that the ruler's requests and preferences were adhered to. Dharma and Danda were the main governing concepts in ancient India, and officials were in charge of making sure "Danda" operated well. Dandaniti was in reality a part of statecraft.

During the Mughal era, the major police personnel were the Faujdar and the Kotwal. Many villages were joined to form a Mahal or Parganah. A subah, or Province, was composed of numerous Parganahs, whereas a Sarkar was composed of many Parganahs. The Kotwal was in charge of maintaining law and order in cities and the suburbs around them. The Kotwals' roles are mentioned in Ain-i-Akbari. In addition to stopping crime and social abuse, he also took control of cemeteries, funerals, slaughter, residences, jails, and seized ownership of heirless property. He used hired informants to obtain information about persons and circumstances while conducting nightly city patrols. The sanad of his job compelled him to ensure that there was no theft in his city. He maintained a roster of every town resident's address and employment, monitored their income and outgoings, and checked the accuracy of weights and measures. He had control over both the prostitution business and the manufacturing and distribution of alcoholic drinks. Therefore, he played a regulatory, investigative, and preventive function.

### **CAUSES OF CUSTODIAL VIOLENCE**

Despite widespread concern on the part of society, incarceration violence has persisted unabatedly over the years. It seems to be rising every year even though literacy rates have increased and more individuals are aware of their rights and duties. The principal component of the criminal

<sup>4</sup> Mekrani, S., 2022. Custodial Death: A Legal Study. *Issue 1 Int'l JL Mgmt. & Human.*, 5, p.1429.

justice system that interacts with people in detention is the police. Finding out the conditions that govern this agency and lead to abuse of persons under their care will thus be important. This section makes an effort to identify the underlying causes of the issue of custodial violence.

### **1. Work pressure among police officers**

“Given the deteriorating law and order situation, riots, political unrest, student unrest, terrorist activities, rising incidence of bribery, corruption, tax evasion, violation of fiscal rules, smuggling, and money-laundering, the police in India have a difficult and sensitive role to accomplish”<sup>5</sup>. The presence of organised crime gangs is spreading across society. They routinely commit crimes without leaving a trace by employing cutting-edge weaponry, explosives, and other technologies. Dealing with terrorist and rebel groups is very different from doing business with typical criminals. These criminals have had extensive training, have become tough, and have access to cutting-edge weapons.

Pressure is a major factor in the Police's continued use of violence. Despite obstacles to effective job performance, there are several sources of pressure that primarily pertain to performance or output outside the confined scope of the police position. Police officers must deal with crime and unrest directly, not on scraps of paper. There is a lot of pressure put on the administration and the people over this. The restrictions resulting from the system's real functioning are in addition to the limits imposed by the system itself. The result of police efforts because they cause evidence to deteriorate and consequently decrease the likelihood of conviction in a court of law. Legal and medical records are frequently delivered quite slowly.

### **2. a thirst for money**

This is the most heinous justification for torture in detention, and it appears to be spreading. At the station level, a lot of police officers use force to extract money from criminals and innocent bystanders. SHO becomes highly powerful and gives his acts a feeling of finality thanks to the legal framework and the nature of the proof, which accidentally gives him the capacity to demand money and avoid the supervisory process' corrective measures. The FIR is given significant weight by the courts, and the type of FIR that is actually drafted relies on the police officer who is on duty. He can always keep an honest man lingering around the police station while looking into a dacoity case by threatening to accuse him, even beating him up. After the incident, supervision takes place, and while an effort can be made to discipline the involved policeman, it rarely has the ability to right the error or retrieve the evidence that has degraded. Everyone prioritises money and wants it more than anything else, which reflects the mentality of our low-tech high society. Chains from the ministry to the police were created for this in the police system. Police equipment today serves as a tool of income generation for ministers and personnel. Each police station has a fee, and if any officers are willing to pay it they get promoted.

### **3. punitive violence**

There are a few good police officers who are misinformed, but they all agree that the criminal should not get away with it. They sincerely feel that there is no other method of crime control than a good thrashing.

"The reason for the use of the third degree method is due to incorrect convictions. There is a substantial segment of both the public and the police that believes that dealing with criminals, particularly hardened ones, is best accomplished using only third degree measures. They contend that a prison sentence no longer serves as a deterrence to offenders. Since the circumstances within the jails have begun to outperform those outside and there is nothing the police can do but apply force, they continue to be happy there.

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<sup>5</sup> Nivedha, V. and Pandey, N., CUSTODIAL VIOLENCE: A MAJOR VIOLATION OF HUMAN RIGHTS.

#### **4. positive reinforcement**

No of the limitations, results must be generated. Currently, a violent police officer—say let's a sub-inspector—who utilises only quick fixes and dishonest tactics gets the job done. “All of his misdeeds must be forgiven as a consequence of the creation of results, which relieves strain on his superiors and even garners universal praise”<sup>6</sup>. Such a cop advances in his hierarchy over time, and occasionally early. In his own views, as well as in the perspectives of his peer group and his subordinates, this supports his employment of third degree approaches. Sometimes a police officer's third-degree skill is so well-regarded that another officer who is dealing with a difficult case or scenario asks for his help. Then, acting like a top worker, he "tackles" the suspect and achieves results, earning a reward in the process. When the third degree procedure yields results, it is constantly praised, which is a major contributor to police aggression in detention. As a result, police brutality is positively reinforced since it yields outcomes quickly—or at least more quickly than it would otherwise.

#### **4. lack of proper training**

The employment of third degree procedures by police officers is frequently caused by a lack of sufficient training. The elements that cause violence include the absolutely insufficient training provided to constables, the overall lack of attention to the importance of controlling one's temper, being courteous and respectful to the people, and avoiding brutality or excessive harshness. One of the goals of training, according to the Gore Committee on Police Training in 1972, “should be to instil the proper attitude toward the public, which entails never forgetting that the civil servant is the servant and not the master of the society.”<sup>7</sup>

### **CONSEQUENCES**

- 1. Physical repercussions: Physical effects on the victim include swelling and discomfort in various body parts, which prevents him from doing the everyday chores that are required of him. These effects might have a significant negative financial impact on a household.**
- 2. psychological effects:** depression and other symptoms of post-traumatic stress disorder. Among the victims, anxiety, flashbacks, nightmares, sleeping issues, phobias, and a sense of possibility predominate. It can make it difficult for them to live a regular life.
- 3. Economic repercussions:** The financial burden of custodial abuse victims must also fall on them. It is incurred when participating in investigation and inquiry. Additionally, the victim must spend a lot of money on legal fees.
- 4. Social repercussions:** In general, society victimises the victim and his family again. The victims are stigmatised and treated like criminals, which causes them to avoid social situations. It can intensify depression.

### **CUSTODIAL VIOLENCE AND INDIAN CONSTITUTIONAL – WAYS OF PREVENTION**

Arrest, imprisonment, torture in custody, and other crimes committed while in custody are protected by the legal system of India, which is both constitutional and statutory. A person who injures, tortures, or kills a person in custody is punishable by the substantive law (Indian Penal Code, 1861). A person in custody's legal rights are protected by a number of laws in the procedural law (Criminal Procedural Code, 1973, and Indian Evidence Act, 1872). Significant court rulings have complemented the applicable legislative and constitutional provisions on the matter.

“According to Article 21 of the Indian Constitution, no one may be deprived of their life or personal freedom without doing so in accordance with a legal process”<sup>8</sup>. Life is a fundamental human

<sup>6</sup> Mekrani, S., 2022. Custodial Death: A Legal Study. *Issue 1 Int'l JL Mgmt. & Human.*, 5, p.1429.

<sup>7</sup> Chouhan, K.S., 2018. Police Reforms against Custodial Violence in India: Past and Present. *Int'l JL Mgmt. & Human.*, 1, p.29.

<sup>8</sup> Vohra, V.K., Singh, D. and Malik, S., 2016. Custodial Death: A Two Years Prospective Study. *Medico-Legal update*, 16(1).

right. Personal liberty is protected by Article 22, which states that the person who has been arrested should be informed of the reasons for his arrest and should be produced before a magistrate within 24 hours of his arrest. "The right to life does not just mean having a physical existence"<sup>9</sup>; it also means having a life filled with the dignity required for human existence in a society. The most prized treasure of man is freedom.

Our constitution includes provisions for the preservation of life and liberty as well as protection from or against citizen arrest. The person who has been so arrested is also a citizen of India, and as such, he is protected by Article 21 of the Indian constitution. If his life and liberty are to be restricted in any way, it must be done in accordance with Article 21, which states that "no person shall be deprived of his life or personal liberty except according to procedure established by law."<sup>10</sup> As the Honorable Supreme Court has demonstrated, the term "personal liberty" does not merely refer to freedom from physical restriction or jail imprisonment. "The purpose of rehabilitation is to enable the torture victim to lead a life that is as full as possible again. It takes time to rebuild a person's life once their dignity has been violated, thus ongoing financial, physical, psychological, and social care is required"<sup>11</sup>. Treatment must involve a multifaceted approach that addresses both psychological and physical needs. It is crucial to address the requirements, issues, expectations, viewpoints, and cultural references of the patients. Numerous internal and environmental elements are likely to have an impact on the outcomes of torture.

Increasing awareness: In a complex and diverse community, increasing knowledge of prisoners' rights textured as our Indian society, it might be a difficult work but is crucial. The task furthermore needs dedication and perseverance, as well as the participation of all social groups, are essential to bringing about the human rights to grow despite social injustice's obstacles. Several laws exist to protect the rights of inmates and stop violence in prisons, yet the the general public is ignorant of their own rights. Therefore, it is crucial to raise public awareness or effective application of these laws. The media should concentrate on raising knowledge of these rules since it is the simplest way .This allows illiterate individuals to learn.

## **CONCLUSION**

Custodial killings and violence are not a recent occurrence. It has long been prevalent in our culture. Despite several attempts in recent years, torture and other forms of cruel treatment are still widespread in India and continue to deprive thousands of people of their human dignity. Torture in detention is now so commonplace that not just the police and bureaucracy, but also the general public accept it as a standard method of police questioning. As a result, the news of such extreme behaviour only shocks society for a brief period of time. When a person in custody passes away, there is a public outcry that, at most, can be calmed by forming an investigating committee. In all nations, it is legal for the police to use physical force when necessary. In actuality, this authority is fundamental to its function and cannot be contested. It is a requirement of the law for police officers. Despite laws that protect a person's life and freedom, despite many reports from several committees that are issued periodically, why do acts of brutality, torture, and fatalities committed while in custody continue to occur. We acknowledge the strain and other distractions that police labour under, but they have no right to treat a vulnerable individual in their custody brutally while disobeying the "canons of law." The people, not the police, are the true rulers in a democracy like India because they have the sovereign authority. The government, which is ultimately answerable to the people, is represented by the police as its agent. In order to keep society a secure environment to live in, the police must safeguard it from the crimes committed by murders, armed robbers, repeat offenders, and terrorists. Thus, the capture of the dacoit group, the arrest of the accused who fiercely resists arrest, etc. These are the circumstances that need some form of police counterviolence.

<sup>9</sup> Bansal, Y.S., Murali, G. and Singh, D., 2010. Custodial deaths—an overview of the prevailing healthcare scenario. *J Indian Acad Forensic Med*, 32(4), pp.315-17.

<sup>10</sup> Kalwatar, A., 2020. Custodial Death: The Legal Murder. *Issue 5 Int'l JL Mgmt. & Human.*, 3, p.1223.

<sup>11</sup> Anand, D. and Anurup, P., 2020. Custodial Death- "A Curse to Humanity". *Supremo Amicus*, 20, p.142.