

CUSTODIAL VIOLENCE: CAUSES, EFFECTS, AND PREVENTATIVE STRATEGIES.

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ABSTRACT

Custodial violence encompasses the different forms of torture that an individual in jail, police custody, or court custody may experience for a variety of reasons. The goal of the current study is to comprehend the underlying factors that contribute to custodial violence and the many strategies employed to stop this serious injustice. In developing nations like India, where the bulk of the population is still ignorant of the laws protecting their fundamental human rights, custodial violence appears to be a huge issue. Many incidences of custodial abuse have gone unreported because the general public is unaware of them, despite the fact that the National Human Rights Commission's existence has given the impoverished and defenseless victims an easy way to obtain immediate remedy. Although law enforcement is supposed to uphold the rule of law and defend people's rights, police violence against suspects, defendants, and prisoners has been shockingly on the rise. These victims continue to be treated inhumanely despite several international accords, constitutional measures, and statutory protections. In this regard, a research that aims to educate the general public on the rights and remedies accessible to victims of abuse in custody is urgently needed. This research aims to gather data and attempt to determine the overall amount of crime in India by doing a doctrinal analysis of numerous cases involving custodial brutality.

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

INTRODUCTION

Violence is defined as the use of physical force to inflict or attempt to inflict harm, as well as torture, hurt, and abuse. Occasionally, the harm caused by violence may also be psychological. As per the dictionary definition, violence is any action that uses a great deal of force or energy to physically injure or damage someone. Torturing or inflicting severe agony on the body or mind is done to get information, coerce someone into confessing to a crime, or just to punish them. Torture may result in death in custody if it gets to an intolerable level.

Although the term "custody" can be simply described as guardianship and protective care, it has not been specified in any substantive or procedural legislation. The legal obligation or right to care for someone is what the dictionary defines as custody. In this context, it refers to the condition of being under the general supervision of jail officials, during which time the individual's freedom of movement is restricted. Custody include both judicial and police

custody. Custodial refers to any form of torture or assault that takes place in court or police custody and is against the law. Abuse, mental torment, beatings, rapes, and even death are examples of violence that can range from moderate to severe.¹

OBJECTIVE

The nature, scope, causes, effects, and strategies for preventing custodial violence—a clear violation of inmates' fundamental human rights—are all clarified in this study report. The study also examines the rights that prisoners have under the laws that are now in effect in India, which shield them from crimes committed while they are in custody, as well as the significance of educating the general public about these laws and rights. The study was completed with advice of strategies which might perhaps avoid and minimize the volume of custodial violence.

NATURE OF CUSTODIAL VIOLENCE

Torture is a form of violence committed against a person while they are in custody. Torture is defined 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 for a third party information or a confession, punishing him for an act he or a third party has committed or is suspected of having, or intimidating or coercing him or a third party, or for any reason based on discrimination of any kind," as long as the acts are carried out by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.²

Physical, psychological, and sexual torture are the three categories into which custodial violence falls.

Physical torture

Punching, slapping, beating, forcing oneself into a position, stretching limbs, suspending oneself, limiting one's movement, burning with cigarettes and caustic substances, cutting with sharp objects, electric shocks, disfiguring body parts, chemical exposures in wounds, dental torture, and starvation are examples of physical torture techniques.³

Psychological torture

Threatening to murder or injure the sufferer, his family, or friends, making them hear or see others being tortured; making them injure others, violating their religious convictions, and humiliating them are all examples of mental torture.⁴

¹ Available at : www.legalservicesindia.com/article/1893/custodial-violence-in-india.html

² Article 1, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

³ Nithya Ramakrishnan, *in custody: Law, Impunity and Prisoner Abuse in South Asia 5* (Sage Publication Ltd., 2013).

⁴ *Ibid.*

Sexual torture

Another form of torture that victims endure is custodial rape. Rape committed by the person in charge of a state-owned facility, such as a prison or jail, is known as custodial rape. Sexual harassment, forced pregnancy, and virginity testing are examples of further types of sexual torment.⁵

CAUSES OF CUSTODIAL VIOLENCE

Work stress

Police officers are under a lot of stress because they have to deal with a lot of cases at once and are under pressure to complete a certain number of cases in a specific amount of time. In our legal system, an accused person is deemed innocent until and unless they are proven guilty beyond a reasonable doubt of committing an offense. To show an accused person guilty, they must gather evidence against them. Failure to provide the desired results might result in the officer being moved, which puts a lot of pressure on the police officers, who then adopt tactics that include torturing the accused to get a confession. Since the accused can only be detained for 24 hours, during which time the police must gather a great deal of crucial information needed by the prosecution, they provide news shortcuts to get as much information as possible throughout the inquiry.⁶

Punitive action by police

According to several police authorities, the only method to stop criminals from committing new crimes is to punish them. They claim that because of their continued happiness, prisoners no longer have a deterrent impact on offenders. When dealing with criminals, especially those who have committed major crimes like murders and rapes, prison officials feel that third-degree therapies are effective and that the inmates deserve to be tortured.⁷

To obtain quick results

37% of police time is spent on investigations, with the remainder going toward VIP protection, law enforcement, court appearances, and other tasks, according to the National Police Commission's report. Therefore, in order to overcome the limitation of time, police officers resort to violence as a short cut to get favorable findings during investigations.⁸

To extract money

Since the courts place a high value on FIRs and police officers have the ability to modify the material they contain, some avaricious officials abuse their authority to coerce money

⁵ *Ibid.*

⁶ Available at:

https://www.academia.edu/9267466/CONCEPT_OF_CUSTODIAL_VIOLENCE_AND_TYPES_OF_TORTURE.

⁷ *Ibid.*

⁸ *Ibid.*

out of honest and innocent persons by threatening to incriminate them in crimes like dacoity. The victim may be threatened, beaten, and subjected to other forms of torture by the investigating officer until he is willing to make the payment.⁹

Inadequate training

Police officers sometimes resort to violence against suspects because they are not properly trained in areas like applying scientific procedures to crime investigation and questioning of suspects. In order to get information and a confession, the police employ force against the accused since they lack the expertise necessary for a good investigation. In order to avoid needless violence and harassment, they must be instructed to behave civilly and politely with the general population. Police officers need to be taught about human rights in order to inspire them to defend them.¹⁰

Lack of supervision

Their higher police officers typically do not oversee the police inquiry, which gives them a sense of autonomy and makes them believe they are exempt from prosecution for custodial offenses. They believe that no one will question their actions. Additionally, some police officers frequently escape punishment because there is insufficient evidence against them.¹¹

Psychological issues

The type of strategy a police officer may use throughout an inquiry is also significantly influenced by his personality. A lusty individual may misuse his authority and sexually exploit the victim, while an investigating officer with a sadistic mindset would cause the victims anguish for his own enjoyment.¹²

CONSEQUENCES OF CUSTODIAL VIOLENCE

Physical consequences: Physical symptoms include swelling and discomfort in different places of the body, which prevents the person from doing his daily required tasks. These impacts may result in severe financial challenges for middle-class households.

Psychological consequences: The victims may have symptoms of post-traumatic stress disorder, including anxiety, sadness, flashbacks, nightmares, difficulty sleeping, fear, and feelings of helplessness, which may hinder their ability to lead regular lives.

Economic consequences: The costs associated with attending inquiries and investigations must also be borne by the victims of custodial assault. Additionally, the victim must spend a significant amount of money to battle for his recompense.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

Social consequences: In most cases, society re-victimizes the victim and his family. They could be viewed as criminals and isolated, which makes the victims avoid social situations and might worsen their melancholy.

PROTECTION OFFERED TO PRISONERS UNDER INDIAN LAWS

The Constitution of India

Although there are no specific provisions in the Indian Constitution pertaining to prisoners' rights, both convicts and freemen are entitled to the protections of Articles 14, 19, and 21.¹³

According to Article 14 of the Indian Constitution, the State is not allowed to deny anybody equal protection under the law or equality before the law on Indian soil. As a result, Article 14 considered the idea that like should be treated like and introduced the notion of reasonable categorization. For prison officials to identify different prisoner groups and their classifications with the goal of reformation, this article serves as a very helpful guide and foundation.¹⁴

All Indian people are guaranteed six liberties under Article 19 of the Constitution. Because of the very nature of these liberties, some inmates are unable to enjoy them. Some essential rights, such as the freedom to travel within India or the ability to pursue a career, are denied to convicted individuals simply because of their conviction.¹⁵ Nobody's life or personal freedom may be taken away from them unless it is required by law. Two concepts—the right to life and the principle of liberty—are defined in this article. It is evident from Article 21 of the Indian Constitution that it is accessible to both free persons and those incarcerated.¹⁶

Article 20 primarily grants protection from guilt for offenses. Article 20(3) provides protection against "testimonial compulsion," whereas Article 20(2) forbids "double jeopardy." The Supreme Court ordered a retrial of the defendants following their acquittal by the trial court, and Art. 20(2) was not invoked. For Article 20(2) to apply, the first trial must have taken place before a court that is qualified to hear the case.¹⁷ Only when the accused is forced to testify "against himself" is he protected by Article 20(3); otherwise, he is free to freely waive his privileges by going into the witness box or by voluntarily testifying upon request.¹⁸

¹³ T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361.

¹⁴ Nitai Roy Chowdhury, *Indian Prison Laws and Correction of Prisoners 75* (Deep and Deep Publications, New Delhi, 2002).

¹⁵ State of Andhra Pradesh v. Challa Ram Krishna Reddy, AIR 2000 SC 2083.

¹⁶ Article 21, Constitution of India, 1950.

¹⁷ Zahira Habidullah H. Sheikh v. State of Gujarat, 2004 (5) SCC 353.

¹⁸ Article 20, Constitution of India, 1950.

According to Article 21, the State is required to protect everyone's life, guilty or innocent.¹⁹ The rights of prisoners that are implicitly granted by Article 21 of the Indian Constitution are as follows:

- Rights of inmates of protective homes.²⁰
- Right to free legal aid.²¹
- Right to speedy trial.²²
- Right against cruel and unusual punishment.²³
- Right to fair trial.²⁴
- Right against custodial violence and death in police lock-ups or encounters.²⁵
- Right to live with human dignity.²⁶
- Right to meet friends and consult lawyer.²⁷
- Rights against solitary confinement, handcuffing & bar fetters and protection from torture.²⁸
- Right to reasonable wages in prison.²⁹
- Right to compensation for wrongful arrest, detention and torture.³⁰
- Right against delayed execution.³¹
- Right against public hanging.³²
- Right of release and rehabilitation of bonded labor.³³

It is important to remember that an under convicted prisoner cannot be put to physical or mental constraint if: a) the penalty imposed by the court does not merit it, b) it exceeds the needs of the prisoner's discipline, or c) it amounts to human degradation.³⁴

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.

¹⁹ Paramanand v. Union of India, (1989) 4 SCC 286.

²⁰ UpendraBaxi v. State of U.P., (1983) 2 SCC 308.

²¹ M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544; Article 39-A, Constitution of India.

²² Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 81.

²³ Jagmohan Singh v. State of U.P., AIR 1973 SC 947.

²⁴ Rattiram v. State of M.P., (2012) 4 SCC 516.

²⁵ D.K. Basu v. State of W.B., (1997) 1 SCC 416.

²⁶ Jeeja Ghosh v. Union of India, (2016) 7 SCC 761.

²⁷ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

²⁸ Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1579.

²⁹ People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473.

³⁰ Rudal Shah v. State of Bihar, AIR 1983 SC 1086; Bhim Singh v. State of J & K, (1985) 4 SCC 677.

³¹ T.V. Vatheeswaran v. State of Tamil Nadu, AIR 1983 SC 361.

³² A.G. of India v. Lachma Devi, AIR 1986 SC 467.

³³ BandhuaMuktiMorcha v. Union of India, AIR 1984 SC 802.

³⁴ P.M. Bakshi, *The Constitution of India* 79 (Universal Law Publishing, New Delhi, 14th ed., 2017).

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 police officer's confession cannot be used against an accused individual.³⁵ A confession made by someone in police custody cannot be used against them unless it is made in front of a magistrate right away.³⁶ The purpose of this clause is to stop the police from coercing the accused into making a confession.

The Code of Criminal Procedure, 1973

Those who are detained and not charged with a crime carrying a death sentence or life in prison are protected against torture under Sections 46 and 49 of the Code. Following the 2005 amendment, Section 46(4) of the CrPC states that a woman cannot be detained after sunset or before sunrise, unless there are special circumstances and the female police officer has the written consent of the relevant judicial magistrate. Another crucial protection against arrest authority is included in Section 49 of the CrPC. The apprehended individual cannot be subjected to greater restriction than is required to keep him from escaping; in other words, he cannot be tortured or subjected to violence in the guise of making an arrest.

The Protection of Human Rights Act, 1993

In order to address the national and worldwide need for a legislation to safeguard human rights and punish violators of such rights, the parliament enacted the preamble of the Human Rights Act, 1993. Section 2(1) (d) of the Protection of Human Rights Act defines human rights. The need for effective and efficient ways to deal with the problem, bringing in transparency and more accountability, was prompted by shifting socioeconomic conditions and new trends in the nature of crime and violence. The Supreme Court has referred to the National Commission as a unique expert body, maybe for this reason.

MEASURES FOR PREVENTION OF CUSTODIAL VIOLENCE IN POLICE PROCESS³⁷

Raising awareness: Raising awareness of prisoners' rights in a culture as intricate and multifaceted as Indian society might be difficult, but it is crucial. All facets of society have a vital role to play in ensuring that human rights thrive in the face of social injustice, but the task also calls for dedication and perseverance.

³⁵ Sections 25, The Indian Evidence Act, 1872.

³⁶ Sections 26, The Indian Evidence Act, 1872.

³⁷ M.R.Biju, *Human Rights in a developing society* 131 (A Mittal Publication, New Delhi, 1st edn., 2005).

Many laws have been passed to protect inmates' rights and avoid custodial brutality, but the majority of the people are uninformed of these laws, therefore their mere existence is insufficient to ensure their proper implementation. Thus, raising public knowledge is essential to the effective application of these regulations. Since it is the simplest way for illiterate people to learn about their rights, the media should concentrate on raising awareness of these laws. Students and non-governmental organizations must also participate in educating the public about their rights and the laws that the state has put in place to safeguard them. Additionally, information may be sent to as many individuals as possible.

Police training: The police and security forces should strive for police reform in order to modify the mindset and approach of police officers with relation to investigations so that they respect and acknowledge human rights. They should also be trained to uphold human rights.

Supervision: To prevent custodial violence, police personnel participating in investigations must be continuously monitored and overseen by their senior officers.

Utilization of scientific methods: video cameras are necessary to provide ongoing monitoring of the accused while they are in jail, and contemporary ways of maintaining records is necessary to stop data tampering related to FIR.

Prompt action: other investigative organizations, like the CBI or Human Rights Commission, should look into charges of custodial brutality against police, and if necessary, prosecution should follow. Frequent therapy: Police officers are under a lot of physical and mental stress due to their job, which has an impact on their personalities and interpersonal connections. The state must take action to ensure that police are not experiencing psychological impairments as a result of their work-related stress.

Additional steps to avoid custodial abuse include:

- *Adopting an official policy to safeguard inmates' human rights*
- *Investigating all complaints of torture impartially and without prejudice*
- *The officer who committed custodial violence has to be held responsible and prosecuted. Police officers who subject detainees to third-degree torture and cause their deaths should be charged with murder.*

All financial benefits owed to officers who commit such cruel and inhumane custodial crimes shall be forfeited, and they must be fired from the police force.

- *The detainees must be fully informed of their rights.*
- *It is necessary to determine the cause of soft torture and take appropriate preventative action.*

India's adherence to international treaties should be enhanced, and the measures against torture should be improved.

CONCLUSION

India's current situation is terrible, with an alarming rise in the number of documented incidents of violence against inmates. The irony is that the law enforcement agency, which was created to safeguard people's rights, is the one that violates these rights by taking basic human rights for granted. It is a sign of disrespect for the law itself if those who enforce it start breaking it. It violates the social compact that is implied in the structure of the state.

Therefore, a specific legislation passed for the same reason must make custodial violence a criminal offense. The public has to be made aware of the need of properly enforcing the laws and constitutional provisions that safeguard inmates' rights and the Supreme Court's rulings. To stop more of these prison crimes, the public, particularly NGOs and the media, must continuously monitor police abuses. To ameliorate the situation, the recommended preventive actions call for a great deal of commitment and work. In police detention, torture is the biggest violation of human dignity. Law-abiding officers shouldn't see this as permission to flout the law at will.