

“The Impact of Custodial Violence on the Criminal Justice System in India”

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INTRODUCTION

Custodial violence and the abuse of police power have emerged as critical issues of human rights concern in contemporary societies. These issues not only challenge the principles of democracy but also hinder the development of human well-being. The term "custodial violence" encapsulates the physical and mental torture inflicted upon individuals held in police custody, reflecting a stark violation of their human rights¹. This practice constitutes a crime against humanity, dismantling the very essence of human dignity. In developing countries like India, custodial violence takes on a complex and challenging form, often driven by systemic factors rather than individual aberrations.

In India, custodial deaths have been a long-standing issue and have raised concerns about human rights violations and abuse of power by law enforcement agencies². According to the National Human Rights Commission, custodial deaths are the worst form of fundamental rights violations. Despite legal provisions, such incidents continue to occur, often resulting in public outcry and calls for accountability. The root causes of custodial deaths in India range from police brutality and torture to medical negligence and inadequate facilities in jail. Addressing this issue and ensuring justice for victims is crucial for upholding the legal system and protecting human being rights in India.

Whereas Custodial torture refers to the physical, mental or psychological abuse of a person while in police custody or jail. In India, custodial torture has been a widespread problem, violating the rights of individuals and causing immense suffering. Despite being prohibited under both national and international law, incidents of custodial torture continue to be reported in the country. The use of abuse as a means of extracting confessions or information from individuals is unacceptable and constitutes a serious breach of human rights. In addition to the immediate physical and psychological harm caused to the victims, custodial torture also undermines the integrity of the criminal justice system and erodes public trust in law enforcement agencies. Addressing the problem of custodial torture in India is essential for ensuring the protection of human rights and the rule of law.

¹ Shephalika Srivastava, Custodial Violence: Horrendous Crime in a Civilised Society, 5(5) *International Journal of Law Management and Humanities* (2022).

² Ishita Ayala, Custodial Violence in India, *The Society for Advancement of Criminal Justice*, 12 June 2023, available at: nujssacj.com/post/custodial-violence-in-india 2000, India (last visited on Aug 9, 2023).

CUSTODIAL VIOLENCE: MEANING AND CONCEPT

As per the Chambers Dictionary, 'custody' refers to the state of being detained by the police, arrested, or imprisoned. 'Violence' denotes the utilization of force by one individual against another, resulting in harm. This harm can encompass physical, psychological, or other forms of injury.

Custodial violence, in essence, involves the infliction of torment or aggression upon an individual or a group of individuals while they are under the control of law enforcement agencies or the judiciary³. The Law Commission of India delineates custodial violence as a transgression committed by a public servant against an individual who is arrested or detained, thereby in custody⁴. This kind of violence frequently culminates in the victim's demise or leaves lasting psychological scars. Notably, it's pertinent to recognize that the concept of custodial violence lacks a formal legal definition. It encompasses acts such as unlawful confinement, unjust arrests, demeaning treatment of suspects, coercion for extracting information, as well as various forms of physical, psychological, and sexual abuse.

QUANTIFYING THE REALITY: UNVEILING DISTURBING FIGURES

The gravity of custodial violence finds unsettling resonance in statistics emanating from authoritative sources like the National Human Rights Commission (NHRC), the National Crime Records Bureau (NCRB), and the National Campaign Against Torture (NCAT). These figures offer a stark glimpse into the alarming prevalence of custodial violence and its harrowing consequences:

- **Custodial Deaths in 2021:** The NHRC's data paints a sombre picture, revealing that 151 individuals lost their lives while under police custody during the year 2021.
- **Judicial Custody Fatalities in 2020:** NHRC's records for the year 2020 mark a staggering tally of 1,569 deaths in judicial custody, underscoring the magnitude of the issue.
- **Suicides Attributed to Police Torture (2020):** NCAT's documentation presents a distressing insight, capturing 55 cases of suicide directly linked to police torture during the year 2020⁵.
- **Gender-Specific Atrocities:** Regrettably, the sphere of custodial violence extends its grasp to women. Reports unveil instances of torture, custodial rape, and the deeply troubling occurrence of gang rape.

These figures serve as a distressing reminder of the urgency of addressing this issue at both systemic and societal levels.

³ Sambit Rath, Custodial violence, iPleaders Blog, 23 June 2022, available at: <https://blog.ipleaders.in/custodial-violence/> (last visited on Aug 8, 2023).

⁴ Ibid.

⁵ Ishita Ayala, Custodial Violence in India, The Society for Advancement of Criminal Justice, 12 June 2023, available at: nujssacj.com/post/custodial-violence-in-india-2000,India (last visited on Aug 9, 2023).

VARIETIES OF CUSTODIAL VIOLENCE: A MULTIFACETED PERSPECTIVE

Custodial violence manifests in diverse forms, with authorities resorting to varying methods based on distinct scenarios and objectives—ranging from extracting information to an abuse of power. Let's delve into the different categories of custodial violence, each leaving a distinct mark on victims and underscoring the dire need for intervention.

Physical Aggression: Among the prevalent forms, physical violence assumes a prominent place, often employed by law enforcement. This method hinges on the use of physical force to induce bodily harm and exhaustion, causing the victim untold suffering. Instances of this kind of custodial violence can even prompt the victim to experience an immediate sense of peril, heightening the trauma they endure⁶.

Psychological Torture: Another facet of custodial violence delves into the psychological realm of the victim. This sinister approach revolves around manipulating the mental state of detainees. Authorities may resort to tactics such as withholding basic necessities—like food, water, sleep, or even access to a toilet—precipitating a decline in the victim's confidence and morale. Adding to this torment, humiliation and threats to loved ones inflict severe mental agony, deepening the psychological wounds borne by the victim.

Unveiling Sexual Coercion: The most repugnant aspect of custodial violence is sexual violence—an abhorrent crime in itself. Sexual violence encompasses any endeavour to elicit a sexual act through violence or coercion. It takes on ghastly forms like rape, sodomy, and other forms of sexual assault. Such atrocities leave victims scarred not only physically but also emotionally, emphasizing the urgency of combatting this heinous violation of human dignity.

The Causes of custodial violence

Several factors have contributed to an upsurge in judicial and prison violence in the nation. Many of the most typical causes are covered below⁷:

- **Lack of stringent laws:** To stop violence committed while a person is being held in custody, strict rules must be passed. Custodial abuse is not yet a crime in India, and individuals in positions of authority have unfairly benefited from it for many years.
- **No permanent prison reform:** There is less potential for transparency because the entire jail system is fundamentally opaque. India's jails continue to suffer from subpar conditions, overcrowding, severe labour shortages, and inadequate protection from injury.

⁶ Shephalika Srivastava, Custodial Violence: Horrendous Crime in a Civilised Society, 5(5) *International Journal of Law Management and Humanities* (2022)

⁷ Sambit Rath, Custodial violence, iPleaders Blog, 23 June 2022, available at: <https://blog.iplayers.in/custodial-violence/> (last visited on Aug 8, 2023)

- **Workplace Stress:** The police are under tremendous pressure to solve complex cases quickly, therefore when violence is the only option, they resort to it to obtain confessions and evidence.
- **Social Component:** Considering the "an eye for an eye" mentality, the powerful individuals decide to employ violence to extract information from those who are accused of committing crimes.
- **Failure to adhere to international standards:** India joined the United Nations Convention against Torture in 1997, although the country has not yet made its provisions mandatory.

Other factors contributing to the prevalence of custodial violence in the nation include insufficient time for interrogations, pressure from higher authorities, and long workdays.

SYSTEMATIC COMPULSIONS AND POLICE ATROCITIES

Custodial violence often arises due to systematic compulsions within law enforcement agencies. This creates a situation where a significant number of cases stem not from individual misconduct but from larger structural issues. The nature of custody can encompass judicial, police, or institutional settings such as hospitals and homes. Instances of custodial violence can even occur under the control of terrorist organizations or insurgent groups. The unchecked proliferation of this practice, evident since the colonial era, has often been facilitated by tacit support from senior police officials, bureaucrats, politicians, and even the judiciary⁸.

In recent times, custodial crimes have garnered attention from the public, media, legislature, judiciary, and human rights commissions. Judicial activism, comprehensive media coverage, initiatives by the National Human Rights Commission, and the intervention of civil society collectively highlight the urgent need to combat torture and uphold human dignity within the criminal justice system.

POLICE ATROCITIES: THE DIZZYING EFFECT OF POWER

Power, while meant to facilitate effective law enforcement, sometimes intoxicates even the best of individuals. Law enforcement officers, like all individuals, can succumb to the corrupting influence of unchecked power. The desire to quickly solve cases or personal greed can drive officers to employ illegal means. The Indian Constitution, through Article 21, provides a protective umbrella against such abuse of power, affirming that no individual shall be deprived of life or personal liberty except through a procedure established by law. However, custodial violence continues to persist, leading to a troubling question of credibility within the rule of law and the administration of the criminal justice system.

⁸ Rahul SK, Custodial Torture in India: Need for Separate Legislation, SSRN, 22 September 2022, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4226400 (last visited on Aug 10, 2023)

ROOTS OF PROTECTION IN INDIAN LAWS

The Indian Constitution, through its various provisions, safeguards against custodial violence and its consequences. Article 20 prohibits the retrospective application of penal laws and ensures protection against double jeopardy and self-incrimination⁹. Article 21 guarantees the protection of life and personal liberty, encompassing the prohibition of torture, assault, or injury against individuals under arrest or custody¹⁰. Judicial interpretation of these constitutional provisions reinforces the need to prevent abuse of power and ensure justice.

The Code of Criminal Procedure, 1973, further reinforces safeguards against custodial violence. Provisions such as Section 49 limit the restraint imposed upon arrested individuals to what is necessary to prevent escape¹¹. Section 57 mandates that no individual be detained beyond 24 hours without proper authorization¹². However, despite these legal protections, custodial violence continues to plague the criminal justice system.

RECENT CASES EXPOSE DISTURBING INSTANCES OF CUSTODIAL VIOLENCE

In recent times, several harrowing cases of custodial violence have come to light, casting a grim shadow on the state of law enforcement and the protection of human rights in India. These unsettling incidents underscore the urgent need for reform and accountability within the criminal justice system.

1. Tamil Nadu Tragedy: Jayaraj and Fenix Case (2020)

One of the most chilling instances occurred in Tamil Nadu in 2020. Jayaraj and his son Fenix were apprehended by the police for alleged violations of COVID-19 lockdown rules. Shockingly, the police subjected them to sexual assault and brutal torture, resulting in their tragic deaths. The ordeal lasted an agonizing seven hours, during which the police officers took turns in inflicting beatings on the victims. Stripped of their dignity, the victims suffered unspeakable horrors that brought attention to the deep-rooted problem of custodial violence.

2. Hyderabad Horrors: Rape-Murder Accused Encounter (2019)

The case involving the rape and murder of a 27-year-old veterinarian in Hyderabad sparked nationwide outrage. Four men accused in the case were taken into custody by the police¹³. However, during the investigation, the police fired upon the accused, leading to their deaths.

⁹ The Constitution of India, art. 20.

¹⁰ The Constitution of India, art. 21.

¹¹ Code of Criminal Procedure, 1973 (Act 02 OF 1974), s. 49

¹² Code of Criminal Procedure, 1973 (Act 02 OF 1974), s. 57

¹³ Alok Ranjan, Vikas Dubey, Hyderabad rape-murder: A look at stunning encounters in recent years, India Today, 27 March 2023, available at: <https://www.indiatoday.in/india/story/vikas-dubey-hyderabad-rape-murder-a-look-at-stunning-encounters-in-recent-years-2352046-2023-03-27> (last visited on Aug 10, 2023).

This incident raised alarming concerns about custodial violence, prompting an inquiry. A panel chaired by former Supreme Court Judge V.S. Sirpurkar determined that the police intentionally fired at the accused with the intention of causing their deaths. The panel's recommendation to file murder charges against the responsible policemen underscores the severity of the situation.

3. Dubious Demise: Vikas Dubey's Controversial Arrest (2020)

The arrest of gangster Vikas Dubey, who was implicated in the killing of eight police personnel, took a sinister turn. While being transported, the vehicle carrying Dubey met with an accident, raising suspicions of foul play¹⁴. The police claimed that Dubey attempted to escape by snatching a policeman's firearm. In response, the police shot him. However, mounting evidence suggests that this incident was staged and potentially another instance of custodial violence.

4. Torturous Treatment: Uttar Pradesh's Shocking Case (2023)

In a horrifying incident that unfolded in Uttar Pradesh in June 2023, five policemen were implicated in the torture of a man suspected of a crime. The allegations against the police officers are deeply disturbing, involving the insertion of a stick into the victim's rectum and the administration of multiple electric shocks. When it became apparent that they had arrested the wrong individual, the police purportedly offered the victim Rs. 100 as compensation and set him free. This case exemplifies the deplorable disregard for human rights and the urgent need for reform within law enforcement.

These recent cases underscore the dire necessity of comprehensive reforms, increased accountability, and strict adherence to human rights principles within law enforcement agencies. By addressing these issues head-on, India can strive toward a society where justice prevails, human rights are protected, and custodial violence becomes a dark chapter of the past.

KEY LANDMARK RULINGS ADDRESSING CUSTODIAL VIOLENCE

The corridors of justice in India have witnessed pivotal judgments from the Supreme Court that signal a resolute stance against custodial violence and police brutality. These landmark cases stand as beacons of hope, ushering in greater accountability and safeguarding the fundamental rights of citizens.

1. Nilabati Behera vs. State of Orissa¹⁵, 1993:

In a poignant case, Suman Behera's arrest swiftly transformed into tragedy, as his lifeless body was discovered on railway tracks with evident injuries. The police attributed his demise to an escape from their custody. The Supreme Court, however, unravelled a disturbing truth—Suman Behera had fallen victim to custodial violence. The court's judgment held the state accountable

¹⁴ Ibid.

¹⁵ 1993 SCR (2) 581.

for compensating the victim's family with a sum of Rs. 1,55,000, emphasizing that the responsibility rested on the state, not the police.

2. D.K. Basu vs. State of West Bengal,¹⁶ 1997:

A watershed moment arrived when the Supreme Court formally recognized the scourge of custodial violence and police brutality. Declaring custodial violence an affront to human dignity, the court observed that despite recommendations and policies, custodial deaths were escalating. To counteract this, the court laid down 11 comprehensive guidelines for arrest, ensuring the rights of arrestees. These guidelines include notifying family members, informing detainees of their rights, medical examination, legal access, and maintaining records—a collective effort to curb custodial violence's menace.

3. Joginder Kumar vs. State of Uttar Pradesh¹⁷, 1994:

In a case underscoring the importance of lawful arrests, the Supreme Court established that unwarranted arrests are illegal, vehemently reiterating that police powers are not a *carte blanche* for misuse. The court upheld the petitioner's plea, highlighting that police powers are contingent upon justice, not exploitation.

4. Rudul Shah vs. State of Bihar,¹⁸ 1983:

In the Rudul Shah case, an individual's ordeal of wrongful imprisonment after acquittal stirred the judiciary's conscience. The Supreme Court proclaimed that illegal detention not only infringes on the fundamental right to liberty but also necessitates compensation for the aggrieved party. The ruling's essence crystallized in the statement that if the state violates an individual's fundamental rights, compensation is not a mere token but an imperative.

These landmark judgments collectively signify the Indian judiciary's relentless pursuit of justice and the protection of citizens' rights. Through these cases, the courts have underscored that custodial violence has no place in a society striving for equity, justice, and the preservation of human dignity.

THE PATH FORWARD: COMBATING CUSTODIAL VIOLENCE

The prevalence of custodial violence in India highlights the urgent need for reform within the criminal justice system. Judicial activism, media coverage, and the efforts of human rights commissions are essential steps in the right direction. However, a comprehensive approach involving legislative, institutional, and cultural changes is imperative¹⁹.

¹⁶ AIR 1997 SC 610.

¹⁷ 1994 SCC (4) 260.

¹⁸ 1983 SCR (3) 508.

¹⁹ Shephalika Srivastava, Custodial Violence: Horrendous Crime in a Civilised Society, 5(5) *International Journal of Law Management and Humanities* (2022).

Strengthening oversight mechanisms, enhancing the training of law enforcement personnel, and promoting a culture of respect for human rights within the police force are vital aspects of this reform. Additionally, the collaboration of law enforcement agencies with civil society, legal experts, and international organizations is crucial to eliminate custodial violence.

CONCLUSION

Custodial violence remains a significant impediment to human rights and democracy in India. Its impact stretches far beyond the immediate victims, eroding public trust, and undermining the core principles of justice and fairness²⁰. The journey toward eradicating custodial violence requires collective efforts from government bodies, law enforcement agencies, civil society, and the judiciary. By addressing this issue head-on, India can move closer to a society where justice prevails, human rights are protected, and the dignity of every individual is upheld.

²⁰ Ishita Ayala, Custodial Violence in India, The Society for Advancement of Criminal Justice, 12 June 2023, available at: [nujssacj.com/post/custodial-violence-in-india 2000, India](https://nujssacj.com/post/custodial-violence-in-india-2000,India) (last visited on Aug 9, 2023).