



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2023

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Abstract

Custodial abuse is a dark aspect of the criminal justice system in India and also remains an unsettling fact in many parts of the world. Custodial abuse describes a range of actions on someone while they are in the custody of law enforcement or correctional authorities. This abuse not only violates the concepts of justice but also goes to the core of human rights and dignity. There are no particular provisions in Indian law for police-instigated custodial violence. In India, custodial abuse remains a persistent and deeply troubling issue. Reports from organizations like as the National Human Rights Commission (NHRC) and other non-governmental organizations (NGOs) routinely detail incidences of incarcerated abuse and death. Custodial torture and deaths within Indian prisons continue to be a significant human rights issue, reflecting systemic problems. Current implications include continuous human rights violates, mistrust of the criminal justice system, a lack of accountability, and an impunity culture among law enforcement authorities. and agencies. "To what extent do custodial torture and the occurrence of deaths in Indian prisons persist despite existing legal frameworks, and what are the present implications, challenges, and the imperative need for comprehensive legal reforms or rules to address this grave human rights concern?" The paper examines the historical background of violence against inmates in India, covering the period from ancient to the present. It shows an ongoing series of fundamental problems, such as abuses of human rights, a lack of accountability, and an entrenched culture of impunity within law enforcement agencies.

Keywords: Custodial Abuse, Criminal Justice System, Human Rights, Enforcement Agencies, Violence.

I. Introduction

Custodial abuse is a dark aspect of the criminal justice system in India and also remains an unsettling fact in many parts of the world. Custodial abuse describes a range of actions on someone while they are in the custody of law enforcement or correctional authorities. These

abuses violate fundamental human rights, including the right to life, the right to be free from torture and cruel, inhuman, or degrading treatment or punishment, and the right to a fair trial. This abuse not only violates the concepts of justice but also goes to the core of human rights and dignity.

According to the **Chambers Dictionary**, the condition of being held by the police, arrest, or imprisonment is called 'custody.' Violence is defined as the use of force by one person against another in order cause to injure him. Damage might be physical, mental, or both. Throughout human civilization, crimes and criminals have existed, and among the most heinous acts against humanity is torture, representing a fundamental violation of human rights¹.

Custodial Violence

There are no particular provisions in Indian law for police-instigated custodial violence. While several courts have stated that police personnel who commit atrocities against persons in detention or custody should face harsher penalties, there has been a lack of legislative intent to insert these provisions into law. It may also be difficult to commence criminal procedures against a police officer².

If a person dies or disappears after being taken into police custody, or a woman is raped by a police officer while in custody, the law compels the Judicial Magistrate to launch a separate investigation from the one that is being conducted by the police³. If a person in custody dies, the magistrate must order that the body be transferred to a civil surgeon for a post-mortem within 24 hours after death⁴. If this is not done, the Judicial Magistrate must write down his reasons. This parallel Magisterial investigation is seen as critical since it serves as a fail-safe in circumstances of evidence and/or witness manipulation. The NHRC has also issued a set of recommendations that must be followed.

In India, custodial abuse remains a persistent and deeply troubling issue. Reports from organizations like as the National Human Rights Commission (NHRC) and other non-governmental organizations (NGOs) routinely detail incidences of incarcerated abuse and

¹ Gupta, M.K. (2021) Suggestions to curb the menace of custodial violence and brutality: Targeting the ill-conceived notion of 'my area, my custody, and my law', Live Law. Available at: <https://www.livelaw.in/law-firms/law-firm-articles-/custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197?infinitemscroll=1> (Accessed: 20 October 2023).

² Network, L. (2021) Police illegal custody and remedies, Law Insider India. Available at: <https://www.lawinsider.in/columns/police-illegal-custody-and-remedies> (Accessed: 22 October 2023).

³ CrPC Section 176 Code of Criminal Procedure Code, 1973

⁴ CRPC section 176 - inquiry by a magistrate into the cause of death (no date) A Lawyers Reference. Available at: <https://devgan.in/crpc/section/176/> (Accessed: 22 October 2023).

death⁵. The NHRC reported 2150 cases of custodial deaths between 2020 and 2021. While these data only reflect a small portion of the total number of cases⁶.

1.1 Ancient Time to Contemporary World

Custodial violence has a long history in India, dating back to ancient, medieval, and contemporary times. Torture was a popular type of punishment used by law enforcement in ancient India against offenders and suspected. However, sage and saint ideology emphasized the well-being of all persons, including those in confinement. While there was some relief during the Buddhist period, the practice of severe punishment and custodial abuse continued until the medieval period, typically employing harsh measures like amputations and painful ordeals⁷.

When British colonial rule began in India, custodial violence continued as a means of maintaining dominance, and harsh treatments were meted out during the freedom movement. Although reforms to the constitution assured change, custodial violence remains a concern today, demanding collective efforts to hold authorities accountable and build a more humane and just society.

1.2 Research problem

Custodial torture and deaths within Indian prisons continue to be a significant human rights issue, reflecting systemic problems. Current implications include continuous human rights violates, mistrust of the criminal justice system, a lack of accountability, and an impunity culture among law enforcement authorities. and agencies. "To what extent do custodial torture and the occurrence of deaths in Indian prisons persist despite existing legal frameworks, and what are the present implications, challenges, and the imperative need for comprehensive legal reforms or rules to address this grave human rights concern?"

1.3 Literature Reviews

⁵ Custodial deaths in India are a cold-blooded play of power and class (no date) The Wire. Available at: <https://thewire.in/rights/custodial-deaths-in-india-are-a-cold-blooded-play-of-power-and-class> (Accessed: 21 October 2023).

⁶ Over 2,150 cases of deaths in judicial custody in 2021-22: Govt (2022) India Today. Available at: <https://www.indiatoday.in/india/story/over-2150-cases-of-deaths-in-judicial-custody-govt-1928310-2022-03-22> (Accessed: 22 October 2023).

⁷ Dr. Asifa Parveen, and Dr. Naaz Akhtar Siddique (2014) Historical perspective of custodial tortures in India - JETIR. Available at: <https://www.jetir.org/papers/JETIR2108475.pdf> (Accessed: 16 October 2023).

1. A.G Noorani, *Access to Prisons and Custodial Torture, Economic and Political Weekly*, Vol.40, 4497, 4497- 4498 (2005)

A.G. Noorani's paper is probably going to touch on the urgent problems of jail access, the mistreatment of inmates, and the Indian judicial system that oversees these matters. It can also discuss the difficulties and possible changes required to successfully handle abuse in custody. Although they occur worldwide, deaths in custody are more common in underdeveloped nations. by Article 21 of the Indian Constitution, is highly esteemed and is seen as an essential component of the document's fundamental rights.

2. Adhya Khanna, *The Enshrinement of Custodial Violence in India*, Bar&Bench. July 17, 2020

Adhya Khanna's book "The Enshrinement of Custodial Violence in India" is anticipated to offer a critical examination of the detention violence that still occurs inside the Indian criminal justice system. The investigation might go into the underlying reasons behind this problem, the legal structure that oversees it, and possible approaches for change. Sections 330 (voluntary hurt in order to extort confession), 331 (voluntary causing serious hurt to extort confession), 376(2) (custodial rape), and 348 (wrongful confinement) are among the provisions found in the Indian Penal Code.

3. Saksena N.S. 1993 "*Custodial deaths*", *The Telegraph* 15th Oct. 1993

In 2018, there were over 14,000 documented fatalities in custody, according to a 2019 study by the Special Rapporteur on extrajudicial, summary, or arbitrary killings. There is no denying that deaths that occur while a person is in custody damage the reputation of the Indian Police. If the police were led more effectively, these could be removed, but no government appears to want this. Analysing every police officer's transfer in Uttar Pradesh, Madhya Pradesh, and Rajasthan during the previous three months seems to show that the worst3

4. R.S Saini, *Custodial Torture in Law and Practice with Reference to India*, 36 *Journal of the Indian Law Institute* 167, 166-192(1994)

Examination of one kind of custodial violence— custodial torture. For obvious reasons, the police refer to what they conduct as "sustained interrogation," "questioning," and "examining" rather than using the word torture.

5. Shodhganga, *Judicial Response in the prevention of custodial crimes in India.*

In this literature Custodial deaths, a serious human rights violation, are a global issue, particularly prevalent in developing countries. They can result from factors like torture, ill-treatment, neglect, and medical malpractice. A 2019 UN report reported over 14,000 reported custodial deaths in 2018, but the true number is likely higher. Common themes include poor training and supervision of police officers, and the judiciary's role in balancing state authority and individual liberty. Custodial violence is a symptom of this imbalance.

1.4 Research Questions

1. To what extent does custodial violence in India violate the inalienable fundamental rights enshrined under the Constitution of India 1950 and other relevant laws?
2. How effective have existing legal and human rights frameworks been in preventing and addressing custodial abuse in Indian prisons, and what are the key challenges in their implementation?
3. How effective are the safeguards in place against custodial torture and deaths in preventing such incidents?

1.5 Scope Objectives

- To analyze the evolution of Custodial Torture.
- To analyze the extent of custodial abuse including torture and deaths within Indian Prisons.
- To analyze Whether custodial violence in India violates the inalienable fundamental rights enshrined under the Constitution of India 1950 with other relevant laws.
- To provide recommendations about how this custodial torture and death can be reduced in the short run.

1.6 Hypothesis

Custodial violence in India is caused by several factors, such as the lack of a solid anti-torture law, the criminal justice system's lack of accountability and transparency, the culture of

impunity for police and prison officials, the overcrowding and understaffing of Indian prisons, and the use of excessive force by these officials.

1.7 Research Methodology

Throughout the work, a descriptive and analytical methodology is employed. Both primary and secondary data form the study's foundation. This article refers to Statutes, Cases, and Books as primary sources. The numerous publications and journals that have been cited for this paper's aims are examples of secondary sources. Analytical analysis has been performed on all of the collected data to address the research questions. Since the current work is mostly theoretical in nature, no field research is done.

Chapter 2

To what extent does custodial violence in India violate the inalienable fundamental rights enshrined under the Constitution of India 1950 and other relevant laws?

In essence, torture is the merciless treatment of the weak and defenseless by those in positions of authority. Torture under police, jail, or other official authority custody is referred to as custodial torture.

Annual Report on Torture 2020, released by the National Campaign Against Torture (NCAT)⁸, noted that, despite a virtual shutdown of the nation from 24 March to 31 July 2020, including a total lockdown, India saw an increase in custodial deaths during the year and more than one suicide every week due to alleged torture in police custody.

There are the rights of individuals who have been violated in the process of Custodial death and Custodial Torture.

According to Article 21 of the Constitution⁹, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." However, it appears that these rights were unable to trickle down to the people who were being held in captivity. Custodial death (and custodial torture) are grave violations of fundamental rights and should be taken very seriously.

⁸ Indian Torture Report 2020, National Campaign Against Crime, March 18, 2020, <http://www.uncat.org/press-release/india-torture-report-2020-increase-in-custodial-deaths-despite-covid-19-lockdown-at-least-one-suicide-every-week-due-to-torture-in-police-custody/>

⁹ The Constitution of India, 1950, Article 21.

The numerous incidents of torture and fatalities that occur while a person is in prison expose the dark side of the Indian criminal justice system, showing the cruel treatment of those who are in charge which finally results in their demise. It also leads to the custodial deaths and abuse of the individuals in custody and the torture of individuals during periods of proceedings by the police officer or the Interrogation Officers.

The first case is of RUDUL SHAH V. STATE OF BIHAR 1983 AIR 1086: (1983) 4 SCC 141¹⁰. Petitioner Rudul Shah was imprisoned in this case for 14 years. His freedom was sought through the filing of a writ of habeas corpus. This decision is significant because it represents the Supreme Court's first recognition that if a person's constitutional rights are infringed by the government, that individual is entitled to compensation.

The Supreme Court has been gradually broadening the scope of the Right to Life under Article 21 of the Indian Constitution. According to the Maneka Gandhi ruling, this right cannot be taken away "unless in accordance with fair, just, and reasonable procedure established by law". It is unclear if this exemption extends to incidents of violence and fatalities that occur while a person is being held in custody. This ruling upheld the basic and constitutional right to life and greatly expanded the parameters of human liberty.

The Article 20(3) of the Indian Constitution provides the Right of Individual against the self-incrimination. It says 'No person accused of an offence shall be compelled to be a witness against himself'. In the custodial torture the officers are forcing the suspect in the process of interrogation to make himself to compel to be a witness against himself. So it violates the Article 20(3) of the Indian Constitution which is the fundamental right of the individual.

In the case of Nandini Satpathy vs. P. L. Dani and Ors AIR 1978 SC 1025¹¹ The court held that calling a woman as a witness in the police station violates Article 20(3) protect the witness from being forced to answer incriminating questions during the investigation stage. The party pleading must be accused of an offence in order to invoke Article 20(3), and the party must have been subjected to a compulsion to answer the incriminating questions asked of them.

The article 22(1) of the Indian Constitution says that "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice". And Article 22(2) of Indian Constitution says that "Every person who is arrested and

¹⁰ Rudul Shah V. State of Bihar 1983 AIR 1086: (1983) 4 SCC 141.

¹¹ Nandini Satpathy vs. P. L. Dani and Ors AIR 1978 SC 1025

detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate”.

Because the existing prohibitions under the Indian Penal Code (IPC) and the Code of Criminal Procedure lack the precision to cover all forms of custody assault, separate legislation on custodial torture is required. No Indian legislation currently exists that defines "torture" or "custodial torture." Since the police have the authority to conduct incarcerated interrogations and have easy access to the material, they are essentially immune from responsibility. So, when the person has been taken into custody and tortured then his fundamental rights like Art. 22(1) and (2) of Indian Constitution. Also, there is the law and existing legal provisions have been violated in the process of Custodial torture and custodial death.

The section 163 (1) of the Code of Criminal Procedure¹² says that No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872)¹³.

Section 49 in The Code of Criminal Procedure, 1973¹⁴ says that No unnecessary restraint. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape. This section of CrPC will be violated if the individual goes under the custodial torture which lead to death when a law enforcing officer arrested a person and restrains than is necessary to prevent his escape.

And there are also existing legal provisions which provide punishment for the officer who has done the custodial torture and abuse of individual during the interrogation.

The section 220 of Indian Penal Code, 1860¹⁵ provides specifies the penalties for an officer who purposefully restricts someone. And it relates to the accused's unlawful incarceration in a particular location. He or she is authorised to take action, however it is illegal to act with retaliatory purpose or to act with malicious intent. According to the court's ruling, the penalty for this offense is either a fine or a seven-year jail sentence, or both.

¹² Section 163(1) of the Code of Criminal Procedure, 1973.

¹³ Section 24 of the Indian Evidence Act, 1872.

¹⁴ Section 49 of the Code of Criminal Procedure, 1973

¹⁵ Section 220 of the Indian Penal Code, 1860.

And also, according to Section 330 of the IPC¹⁶, anybody who injures someone in an attempt to get information or a confession that might help identify an offense faces up to seven years in jail and a fine.

According to IPC Section 348¹⁷ forbids unlawful detention as well as any kind of confinement used to force a confession or information that might be used to solve a crime. Such detention carries a potential three-year jail sentence in addition to a fine.

Under the Indian Evidence Act, of 1872 According to Section 25, a confession given to a police official cannot be used against the suspect as evidence of any wrongdoing. Confessions made while under arrest are not admissible under Section 26 unless they are made in front of a magistrate. This provision can make the evidence useless when it is collected by the interrogation officer under the Custodial torture.

The inalienable fundamental rights protected by the Indian Constitution and other pertinent legislation are flagrantly violated by custodial violence in India. This terrible reality, which includes torture and deaths in custody, attacks the fundamental foundations of justice, respect, and the rule of law.

Chapter 3.

How effective have existing legal and human rights frameworks been in preventing and addressing custodial abuse in Indian prisons, and what are the key challenges in their implementation?

As long as mankind, torture has existed. Torture in custody, which can even result in the accused's death, is nothing new; it has been done for centuries. The third pillar of democracy is the judiciary. It is essential to safeguard Indian citizens' fundamental rights and human rights. The victims of abuse while in custody have received protection in several rulings rendered by the Indian Supreme Court. The Supreme Court is on guard against any misconduct or aggression committed by public officials, such as the police, against someone who has been tortured while they are in their care. The Indian judiciary enforces the universally recognized international legal rules and conventions for the protection of the rights of victims of abuse while they are in custody.

¹⁶ Section 330 of the Indian Penal Code, 1860.

¹⁷ Section 348 of the Indian Penal Code, 1860.

It is a well-established legal principle that any foreign standards or laws that do not conflict with Indian law may lawfully be implemented in India. Under the auspices of the Indian Constitution's Article 21, 1950, torture and other cruel, inhuman, or humiliating treatment are forbidden. It is illegal to torture someone while they are being investigated, questioned, or for any other reason. If someone is taken into the custody of the police or another authority and their life is not restored to them, it is the state's fault unless a legally mandated procedure is followed. But when the case gets to court, the court must strike a balance between the police's obligation and the preservation of an individual's basic rights; the only remedy available is compensation.

The landmark clause in the Indian Constitution of 1950, Article 21, states that no one may be deprived of their life or personal freedom unless it is done so in compliance with the legal process. This includes the right to a dignified existence. This is a built-in safeguard against abuse or torture by government apparatus. The authority to make an arrest and the procedures that must be followed by the police to preserve the interests of the person who has been arrested are covered in Chapter V of the 1973 Code of Criminal Procedure. The Indian Constitution's Articles 23 and 22 offer further constitutional protection to all citizens, ensuring that life is more than just survival for animals. The concerning circumstances of torture and custodial abuse raise doubts about the legitimacy and operation of the criminal justice system.

"No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment," states Article 5 of the 1948 Universal Declaration of Human Rights. Following this, the International Covenant on Civil and Political Rights was established in 1966. Its article 7 requires the states parties to uphold the principle that "no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment." Specifically, no one may be the subject of medical or scientific research without that person's voluntary permission.¹⁸ The physical, mental, and emotional health of those who have experienced torture suffers long-term consequences that impair or completely destroy their capacity to seek happiness and satisfaction. Torture is a common method employed in many countries to coerce political prisoners or accused criminals into making confessions. Torture is totally incompatible with fundamental human rights. "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment," reads Article 5 of the UDHR. Torture has terrible effects on its victims, which is why it is strictly forbidden internationally. The UDHR's prohibition on

¹⁸ Mishra, J. (2005). CUSTODIAL ATROCITIES, HUMAN RIGHTS AND THE JUDICIARY. *Journal of the Indian Law Institute*, 47(4), 508–521. <http://www.jstor.org/stable/43951999>

torture is reaffirmed in Article 7 of the ICCPR, which also clearly forbids non-consensual scientific or medical research. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which prohibits states from sending individuals to another state where they would be in danger of torture, is the most important legal framework. It requires all nations to implement effective legislative, administrative, and judicial measures to prevent torture in any territory under their jurisdiction (Article 2.1). (Article 3). Courts in each of the 158 states that have ratified the Convention against the use of Tortured Evidence must prohibit the use of such evidence (Article 15). Furthermore, under CAT, all state parties are required to make sure that "law enforcement personnel" or any other individuals involved in questioning people who have been arrested, detained, or imprisoned receive "education and information regarding the prohibition against torture are fully included in their training."¹⁹

India, one of the world's biggest democracies, has long respected human rights. Including the idea of these rights in the Indian Constitution²⁰. this opinion has been expressed by the Supreme Court in NilaBati Behra vs. state of Orissa.²¹ In this case the Letter of one nilabati behra was treated by the court as writ petition under the article 32 of the Constitution, wherein she had claimed compensation for death of her son Suman behra age 22 in the Borders custody industry sundergra original The court while awarding rupees on lack 50000 as compensation of the decision to mother, Made it clear that there can be no question of availability of the defence of sovereignty in case of constitutional remedy. It further said that the court had very wide powers under article 32 of constitution which enables it to about compensation and open update case is valid this is the only mode of address available for contravention of fundamental rights On December 17, 2015, the Revised Standard Minimum Rules for the Treatment of Prisoners were overwhelmingly adopted by the UN General Assembly.²² The guidelines are referred to as the Mandela Rules in remembrance of the late South African President Nelson Mandela's well-documented fight against violations of human rights under the apartheid state and his lifetime commitment to advancing equality and human dignity.

¹⁹ Global Citizenship Commission. (2016). Implementation of Human Rights. In G. Brown (Ed.), *The Universal Declaration of Human Rights in the 21st Century: A Living Document in a Changing World* (1st ed., Vol. 2, pp. 81–104). Open Book Publishers. <http://www.jstor.org/stable/j.ctt1bpmb7v.14>

²⁰ Part III. This deals with fundamental rights such as (i) the right to equality (art. 14-18); (it) to freedom (art. 19-24), right against exploitation (art. 23, 24), freedom of religion (art. 25-28), culture and education (art. 29, 30), right to constitutional remedies

²¹ 1993 AIR 1960, 1993 SCR (2) 581

²² G.A. Res. 70/175 (Dec. 17, 2015) [hereinafter Mandela Rules

The First UN Congress's 1955 Rules for the Prevention of Crime and the Treatment of Offenders are expanded upon by the Mandela Rules.²³ Any discrimination against convicts on the basis of race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or any other status is prohibited under Section 6 of the Convention. According to Section 7 of the Convention, the prisoner's identification, the reasons for his acts, and the dates of his entry and release from the cell must all be kept on file in the register. The procedures for maintaining inmates in their cells are covered in Section 8. According to this section, male and female inmates are to be housed in separate facilities and kept apart as much as feasible.

The Criminal Procedure Code (CrPC) has specific regulations for judicial remand and individual detention. Police officers are not allowed to hold someone in custody for more than 24 hours, as stated in Section 57 of the CrPC. The officer must get special authorization from the magistrate under Section 167 of the CrPC if a circumstance develops that necessitates holding a suspect for some time longer than 24 hours.

Mandate or pre-trial detention is the term used to describe Section 57. The remand is to send cases from the appellate court to the lower court. It also refers to returning the accused to the authorities that were in charge of their incarceration. Court remand of accused person's custody is authorized by Sections 167(2), 209(b) and 309(2). Each of the three divisions is created at a separate point in a criminal trial. The CrPC's Section 167(2) remand provision, which can be employed in either police or court custody, is related to the preliminary phases of an investigation and is utilized to forward the probe. When the magistrate commits the case, a remand under Section 209(b) of the CrPC allows the magistrate to hold the accused until the trial is over. The stage after cognizance, where the subject can only be taken to judicial custody, is covered by Section 309(2).²⁴ To shield the suspect from potential dishonest acts by a police officer, the detention time is not prolonged beyond twenty-four hours.

The Court noted in this historic decision that the rights guaranteed by Articles 21 and 22(1) of the Constitution must be acknowledged and upheld. To guarantee the defense of fundamental rights, the Court released a few directives. When the detained individual is taken to the police station, the arresting officer should advise him or her of their rights.

²³ The rules were approved by the UN Economic and Social Council, ECOSOC Res. 663 C (XXIV) (July 31, 1957) and ECOSOC Res. 2076 (LXII) (May 13, 1977)

²⁴ Substituted by Act no. 46 of 1983, dealing with duty of the magistrate to enquire into cause of police custodial death. Also see, s. 7, Police Act 1861, dealing with power of the Inspector General (I.G.), Deputy Inspector General (D.I.G.), Additional Deputy General (A.D.G.), and District Superintendent to suspend subordinate policemen guilty of any offence

The registry must have a record of who received information on the arrest of the accused and who informed them. Articles 21 and 22(1) must be duly acknowledged and implemented. The magistrate will decide whether or not the police authority complies with all standards.²⁵

Nine Maharashtra police officers were found guilty of causing a death while in custody in 1993; the Bombay High Court sentenced them to three years in jail. The punishment term was increased from three years to seven years each by the Supreme Court, which supported the high court's decision. Given the circumstances of the offense, the punishment's prolongation in the victorious instance is entirely appropriate. Law enforcement must follow the due process of law guidelines outlined in the Constitution. The significant ruling stems from the Apex Court's decision to not only stay the penalty but also to lengthen the term, setting a precedent that the judiciary would not consider any cases involving human rights violations.

The regrettable police event, according to Justice N.V. Ramana and MM Shantanagoudar, undermines public trust in the criminal justice system. According to Section 330 of the Indian Penal Code, the court determined that the police officers engaged in the event were accountable for intentionally injuring the victim to coerce her into confessing.

The NHRC and NCRB figures show an alarming frequency of deaths that occur while a person is in custody. It has to be adjusted. One major problem is the state's support of the police even when they abuse their authority. When a person dies while in custody, police actions must be closely watched, and those who behave dishonestly in the line of duty must face consequences. To get the authorities to realize that they can't use their authority arbitrarily, a precedent must be established. It is quite impossible to assume that there will be any change about custodial mortality if the existing situation is considered.

Strict legal action is required, with the only goal of punishing the people who abused their authority and whose use of violent force resulted in fatalities. Strict adherence to the directives established in the seminal decisions of *D.K. Basu v. State of Bengal*²⁶ and *Prakash Singh v. Union of India*²⁷ is necessary to guarantee a decrease in the number of deaths that occur while a person is in custody. It is quite impossible to assume that there will be any change concerning custodial mortality if the existing situation is considered.

Chapter 4.

²⁵ 2008 Cri LJ 455, 2008 (1) KLJ 9

²⁶ 1997 (1) SCC 416

²⁷ (2006) 8 SCC 1

How Have Recent Instances of Custodial Violence and Death in India Highlighted Ongoing Human Rights Violations?

This chapter delves into the pervasive issue of custodial violence in India, examining recent cases, landmark cases, legislative efforts, and the NHRC's role in addressing this issue.

Recent Incidences of Custodial Violence

- In the year 2020, Tamil Nadu had a horrifying tale of custodial torture when Jayaraj and his son Fenix were taken into police custody for alleged violations of COVID-19 lockdown rules. They were subjected to sexual abuse, torture, and severe beatings, all of which led to their untimely deaths. Such incidents put light on the horrific realities of detention brutality, with police participating in lengthy torture and inhuman abuse²⁸.
- The case of Vikas Dubey, a criminal imprisoned for killing eight police officers in Kanpur, sparked concerns about staged prison violence. The van carrying Dubey allegedly collided with another vehicle while being transferred, and the police stated he attempted to flee, requiring his shooting. However, this occurrence raised questions about its veracity, raising the possibility that it was a case of custodial assault²⁹.
- Five police officers in Uttar Pradesh have been charged with torturing a guy accused of a crime. The victim was subjected to severe treatment that included putting a rod into his rectum and exposing him to repeated electric shocks. It was later found that they had detained the incorrect individual and had freed him after just handing him Rs. 100³⁰.

Landmark Cases Relating to Custodial Violence

Several landmark judgments delivered by the Supreme Court have aimed to address custodial violence and police brutality

²⁸ Jeyaraj and Benicks: Outrage mounts over deaths in Indian police custody (2020) BBC News. Available at: <https://www.bbc.com/news/world-asia-india-53202707> (Accessed: 16 October 2023).

²⁹ Vikas Dubey case explained in numbers: A cat and mouse game (2020) India Today. Available at: <https://www.indiatoday.in/india/story/vikas-dubey-arrested-ujjain-up-police-kanpur-encounter-case-explained-in-numbers-1698644-2020-07-09> (Accessed: 16 October 2023).

³⁰ India, T.O. (2022) 5 up cops torture man, insert stick in rectum, give electric shock: Bareilly News - Times of India, The Times of India. Available at: <https://timesofindia.indiatimes.com/city/bareilly/5-up-cops-torture-man-insert-stick-in-rectum-give-electric-shock/articleshow/92010463.cms> (Accessed: 17 October 2023).

- In **Nilabati Behera vs. the State of Orissa**³¹, 1993, the Supreme Court determined that a victim had sustained injuries as a result of custodial abuse or violence and held the state accountable, granting compensation.
- **D.K. Basu vs. West Bengal State, 1997**: Custodial violence was seen as an attack on human dignity in this judgment, which set 11 principles to be observed during arrests. These recommendations emphasize the rights of those who have been detained, including name tags for police, arrest memos, family notifications, and medical examinations³².
- **Joginder Kumar vs. Uttar Pradesh State, 1994**: This case highlighted the unlawful imprisonment of persons and the abuse of the judicial system³³.
- **Rudul Shah vs. State of Bihar, 1983**: The Supreme Court ruled in this judgment that individuals wrongfully detained are entitled to compensation for the infringement of their essential right to liberty³⁴.

Role of the NHRCs in Preventing Custodial Violence

The National Human Rights Commission (NHRC), which was established in 1993, is critical to the preservation and promotion of human rights. To deter custodial violence, it conducts investigations, including *Suo motu* investigations. Guidelines established by the NHRC include magisterial probes into custody deaths, public notifications to witnesses, and a detailed study of injuries and circumstances leading to deaths³⁵.

Recent Developments

The Supreme Court ordered state governments to install CCTV cameras at police stations by 2020. The court reiterated 9 directions issued in 1996, including deploying women constables during interrogations, the establishment of State Human Rights Commissions, and the filling of vacancies on these commissions. Implementing these techniques correctly might help reduce in-custody violence³⁶.

³¹ Nilabati Behera Alias Lalit vs State Of Orissa And Ors AIR 1960, 1993 SCR (2) 581

³² Basu Vs State of West Bengal (1997 (1) SCC 416)

³³ Joginder Kumar vs State Of U.P 1994 AIR 1349, 1994 SCC (4) 260

³⁴ Rudul Sah vs State Of Bihar And Another 1983 AIR 1086, 1983 SCR (3) 508

³⁵ The National Human Rights Commission. Available at: <https://nhrc.nic.in/sites/default/files/NHRCbrochure.pdf> (Accessed: 23 October 2023).

³⁶ Indulia, B., Sucheta and Ridhi (2021) 2021 SCC vol. 1 part 2: Installation of CCTV cameras in police stations, interest waiver on loan during the moratorium and more, SCC Blog. Available at: <https://www.scconline.com/blog/post/2021/02/17/2021-scc-vol-1-part-2/> (Accessed: 21 October 2023).

What are the International Conventions on Human Rights?

- **International Human Rights Law, 1948:** A clause in the International Human Rights Law safeguards persons from torture and other forms of enforced disappearance. Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment³⁷.”
- **United Nations Charter, 1945:** The United Nations Charter requires that prisoners be treated with dignity and respect. The Charter says clearly that, notwithstanding their confinement, their fundamental freedoms and human rights are guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights³⁸.
- **The Nelson Mandela Rules, 2015:** The Nelson Mandela Rules were approved by the United Nations General Assembly in 2015 to treat prisoners with inherent dignity and to ban torture and other forms of ill-treatment³⁹.

The 273rd Report of the Law Commission of India

Focuses on enacting the "United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment" through legislation. The following are the report's primary recommendations⁴⁰:

- Extending the definition of torture to include knowingly or voluntarily inflicting bodily, mental, or psychic suffering, as well as attempting to do so.
- Drafting the "Prevention of Torture Bill, 2017," which defines the penalty for torture and cruel treatment of persons in detention by public personnel, with a focus on victim protection and compensation.
- Recommending that the United Nations Convention Against Torture be ratified in order to enable extradition and protect persons' right to life.

³⁷ The Convention Against Torture and Other Cruel, inhuman or ... - redress. Available at: <https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf> (Accessed: 25 October 2023).

³⁸ UN charter United Nations. Available at: <https://www.un.org/en/about-us/un-charter> (Accessed: 25 October 2023).

³⁹ The nelson mandela rules: Protecting the rights of persons deprived of liberty, United Nations. Available at: <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty> (Accessed: 25 October 2023).

⁴⁰ Saba et al. (2017) 273rd Law Commission Report on implementation of UN convention against torture and other cruel, inhuman, and degrading treatment or punishment through legislation, SCC Blog. Available at: <https://www.sconline.com/blog/post/2017/11/03/273rd-law-commission-report-implementation-un-convention-torture-cruel-inhuman-degrading-treatment-punishment-legislation/> (Accessed: 21 October 2023).

- Advocating for changes to the Criminal Procedure Code (CrPC) and the Indian Evidence Act to include provisions for compensating victims and shifting the burden of evidence on the police when people are injured while being held in custody.
- Proposing harsh sanctions for anyone involved in acts of torture.
- Suggest the formation of a compensation scheme for victims, with the courts having the jurisdiction to provide appropriate and equitable compensation.
- Calling for the establishment of an effective procedure to protect victims, complainants, and witnesses against maltreatment and threats.
- Emphasising the state's responsibility for damage inflicted by its agents, and arguing that sovereign immunity should not be used to trump constitutional rights.
- In summary, the Law Commission's 273rd Report makes major suggestions targeted at avoiding and responding to custodial violence.

Recommendations and Suggestions

- To properly combat prison violence, India must explore numerous measures, including:
- Providing cops with body cams as a deterrence.
- Ensure the correct operation and frequent inspection of CCTV cameras in police stations.
- Using physiological, physical, and medical examinations to determine an officer's fitness for duty.
- Posting signs at police stations describing arrested people's rights in their native languages.
- Police are leading awareness campaigns.
- Adopting rigorous anti-torture legislation with severe penalties for violators.

Conclusion

Custodial violence in India is a significant issue that undermines the country's criminal justice system and human rights. The research paper examines the historical background of custodial violence, highlighting systemic issues and the effectiveness of existing legal and human rights frameworks. Despite Supreme Court judgments and guidelines from the National Human Rights Commission, custodial violence remains a pressing issue. International conventions like the International Human Rights Law and the Nelson Mandela Rules emphasize the prohibition of torture and inhumane treatment. The 273rd Report of the Law Commission of India proposes the enactment of the "United Nations Convention against Torture" through legislation. To combat custodial violence effectively, the paper suggests measures such as equipping police

officers with body cameras, ensuring proper CCTV operation, conducting fitness assessments, raising awareness about detainees' rights, and adopting strict anti-torture legislation with severe penalties.