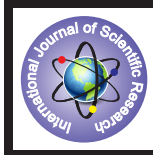


## Repercussions of Custodial Violence: A Static Overview.



### Criminology

**KEYWORDS :** Custodial Violence, Repercussions.

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### ABSTRACT

*Violation is the core of any criminal justice system and the initiation of its action. The instigation for this action and its nurturing are vested as a responsibility with the custodians of law. But when these men who are ushered with the prestigious power of regulating the civil life of the nation, themselves degrade the authority they hold the trust of a common man on the system of governance is crushed. Custodial violence has been the crunch to mistreated police control for decades now. The present work focuses on the issue of this heinous offence by the police and its repercussions on the victims, loss of faith in the institution as one of the major problems as the smooth working of the criminal justice depends on the crucial element of social co-operation.*

### INTRODUCTION

The establishment of the police forces marked the promotion of its preventive and deterrent role to urban crime and disorder. Being an integral and the most sought of part of the justice system due to its investigative nature; the force implicated professionalized and technological bearings in itself as an attempt towards advancement and public welfare. The emphasis was also placed on the training and professional qualifications of the new hires. Despite the attempts towards reforms most of these changes towards improvements go unrecognized due to reasons like highly autocratic leaders, rampant rate of corruption and undue advantage or misuse of authority by the officials at several occasions resulting to a lack of respect and co-operation from the community.

### OBJECTIVES OF THE STUDY

1. To know and analyse the present trend in the rapidly increasing rates of Custodial Violence and Deaths in India.
2. To study the methods of torture induced on over the victims and its repercussions physically and psychologically.
3. To identify methods and measures for combating the heinous effects of custodial violence.

### METHODOLOGY

Universe of the Study:

The present paper focuses on the role of police as a guardian of codes of procedures and their role in flouting their harmonious functioning. Here the cases from various newspaper sources and victim as well as societal reaction towards it have been observed closely and targeted as the concreted elements for this work.

Tools and Techniques:

The current work is primarily based on information and statistical information procured from reliable sources such as national crime reports, NHRC reports and other content derivatives like journals, books, newspaper articles/editorials, internet polls/surveys etc. the contents from all these sources were precisely reviewed and compared to deduced to the desired answers from the available channels.

### CUSTODIAL VIOLENCE

Custodial violence, perhaps one of the worst crimes in a civilized society is a matter of concern for many reasons. Custodial violence, including torture and death in the lock-ups, strikes heavy blow at the rule of law which demands that the powers of executive should not only be derived from law but also that they should be limited by law. The law of arrest expects both individual rights and the states' collective responsibility towards the society. In most scenarios it becomes a challenge to strike a perfect balance between both. Transparency of action and accountability are two possible safeguard to prevent any abuse of power to arrest a citizen. Custodial violence broadly includes custodial deaths, torture and as per the new trend in the crime pattern even custodial rapes. Custodial Violence in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts

of the country. Violence is used as a cheap and easy method of investigation and also as a tool for oppression. It is almost an unwritten understanding that when an officer asks his subordinates to 'thoroughly interrogate a suspect' it would simply mean 'torture'.

In the case of D. K Basu V State of West Bengal, the highest body of justice, the Supreme Court had clearly stated that, "Custodial torture is a naked violation of human dignity. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens", also paying consideration to the tediousness of police task in yielding control over its civil population. Human Dignity is the highest form of fundamental right respected even by our most powerful and prestigious statute book, the Indian Constitution. When an individual is taken under custody it means that he/she becomes the legal property of the state which also means the state and its missionaries become their legal guardians and all its institutions are at their disposal to reprimand them as well as guard them. But the idea of state custody has become so alarming that the society fears co-operation and even the notion of police and police stations.

### STATISTICAL OVERVIEW

The NCRB Report: As per the NCRB publication, Crime in India 2012 edition, the number of complaints reported against police personnel's were 57, during the year 2012, out of which 2,289 cases were registered and 42 police personnel were convicted. The highest number of complaints per 100 Policemen was reported from Delhi (17.0) followed by Madhya Pradesh (14.7) and Chandigarh (10.1) against the National average of 3.7 during the year 2011. 205 cases of Human Rights Violation by Police were reported out of which 19 were charge-sheeted. The highest number of Human Rights Violation by Police was reported in Assam (102 cases). The total incidences of custodial deaths reported all over India was 109, in 7 cases out of which charge sheet was filed against the policemen for involvement in custodial violence but none were convicted. 1 case of Custodial Rape was reported in the country were as 24 cases of custodial deaths were reported as suicide.

The NHRC Report: The custodial violence trend as per the NHRC Annual Reports for the decade (2001-2011) states as follows- From 2001 to 2010, the National Human Rights Commission (NHRC) recorded 14,231 i.e. 4.33 persons died in police and judicial custody in India. This includes 1,504 deaths in police custody and 12,727 deaths in judicial custody from 2001-2002 to 2009-2010.1 A large majority of these deaths are a direct consequence of torture in custody. These deaths reflect only a fraction of the problem with torture and custodial deaths in India. Not all the cases of deaths in police and prison custody are reported to the NHRC. The NHRC does not have jurisdiction over the armed forces under Section 19 of the Human Rights Protection Act. Further, the NHRC does not record statistics of torture not resulting into death. Torture remains endemic, institutionalised and central to the administration of justice and counter-terrorism measures. India has demonstrated no politi-

cal will to end torture.

Maharashtra recorded the highest number of deaths in police custody with 250 deaths; followed by Uttar Pradesh (174); Gujarat (134); Andhra Pradesh (109); West Bengal (98); Tamil Nadu (95); Assam (84); Karnataka (67); Punjab (57); Madhya Pradesh (55); Haryana (45); Bihar (44); Kerala (42); Jharkhand (41); Rajasthan (38); Orissa (34); Delhi (30); Chhattisgarh (24); Uttarakhand (20); Meghalaya (17); Arunachal Pradesh (10); Tripura (8); Jammu and Kashmir (6); Himachal Pradesh (5); Goa, Chandigarh and Pondicherry (3 each); Manipur, Mizoram and Nagaland (2 each); and Sikkim and Dadra and Nagar Haveli (1 each). Uttar Pradesh recorded the highest number of deaths in judicial custody with 2171 deaths, followed by Bihar (1512); Maharashtra (1176); Andhra Pradesh (1037); Tamil Nadu (744); Punjab (739); West Bengal (601); Jharkhand (541); Madhya Pradesh (520); Karnataka (496); Rajasthan (491); Gujarat (458); Haryana (431); Orissa (416); Kerala (402); Chhattisgarh (351); Delhi (224); Assam (165); Uttarakhand (91); Himachal Pradesh (29); Tripura (26); Meghalaya (24); Chandigarh (23); Goa (18); Arunachal Pradesh (9); Pondicherry (8); Jammu and Kashmir and Nagaland (6 each); Mizoram (4); Sikkim and Andaman and Nicobar Island (3 each); and Manipur and Dadra and Nagar Haveli (1 each).

These are the figurative statistics while the realities in many instances are far beyond any recorded numbers. A 2011 publication by Asian Centre for Human Rights of "Torture in India 2011" painted a variation in picture of the grave situation. Though the NHRC functions basically for Human Rights Violation many occasions of state missionary failure goes unreported. The report also mentions cases filed with the NHRC (along with details of the case from East-Indian states) of custodial deaths where in the victim's family received a compensation from the state yet they do not appear in the official statistics of this nation body for human rights. The ACHR report also mentions that NHRC registered only six deaths in police custody in Jammu and Kashmir from 2001-02 to 2010-11. In spite of the fact that on 31 March 2011 Jammu and Kashmir Chief Minister Omar Abdullah in a written reply to a question in the Legislative Council stated that 341 persons had died in police custody in the state since 1990. The NHRC reports does not include custodial violence cases in armed forces as they have been denied a mandate to investigate human rights violations by the armed forces under Section 19 of the Protection of Human Rights Act, 1993 as amended in 2006.

#### ROLE OF LAW

The undue use of power and authority has been rampant in the pretext of suspicion and investigation. As per Section 51 of the CrPC every person arrested has the right to know the reasons for his arrest and have a counsel. And most importantly warrant is to be issued to arrest a person excepting in certain few cases where a warrant is not required as per Section 41 of the CrPC, but in most instances the police in the pretext of suspicion and procuring aid for further investigation has been throwing people behind bars without even securing the bases for their suspicion. Police frequently fail to produce suspects before a magistrate within 24 hours, and do not permit suspects to inform their families of their detention or consult an attorney. Police interviewed by Human Rights Watch say they do not abide by these legal requirements because 24 hours is insufficient time to gather information from the suspect. The mere humiliation and trauma of being locked up in jails for a few hours instigates people to kill themselves. The witnesses have also been put to severe torture of the worst kind with a view to extract information, even though the CrPC provides that only a Judicial magistrate has the authority to record confessions and statements coming out of his own will in and in any case if the person refuses his will in his confessions then the magistrate shall not authorize his detention in police custody as stated in section 164 of the CrPC. The Law Commission of India has noted that domestic law confers "a vast, sometimes absolute and on some other occasions, an unguided and arbitrary power of arrest upon police officers." (Amendments to the Criminal Procedure Code in 2008 that reduce police authority to make warrant less arrests are not yet in force.) Several studies have shown that many police

abuse this power, arresting suspects without sufficient evidence and detaining them without sufficient due process.

A large number of reported cases of torture and custodial death are a result of attempts to extract a confession relating to theft or other petty offences. This implies that suspects belonging to the lower economic and social strata are particularly vulnerable.

#### METHODS OF TORTURE

Most common methods of torture applied are: Prolonged solitary confinement, Solitary confinement coupled with coercive and harsh treatment, Physical assault with or without marks of violence, Overcrowding of an outrageous nature in rooms reaching to the extent of intermingling persons under custody with mentally ill persons or with sexual offenders or with opposite sex or with sadistic senior students, Outraging the modesty of women under custody, Torture of children in front of parents and vice versa, Lack of sanitation. With this degree of ill-treatment it is not only the guilty who confesses but even an innocent would succumb.

#### EFFECTS OF CUSTODIAL VIOLENCE

As torture continues a perverted intimate relationship develops between the victim and the torturer leading to a feeling of dependence, helplessness, fear and finally to the breakdown of any vestige of resistance on the part of the victim. This process is aptly named as "DEMOLITION." Confessions are made at this stage. Some prefer death and find some way to it before this stage. Few are killed accidentally or deliberately and afterwards disposed off. Even if they are freed from the torture the aftermath and the repercussions are tremendous physically as well as psychologically it definitely would vary from person to person and the methods adopted. Depending upon the methods used external marks of violence may be absent in comparison to internal injuries. Certain techniques may not show external scars but the internal damage may be severe and to the vital organs. Certain psychological reactions noted by mental health experts were Post traumatic stress disorder characterized by re-experience of the trauma, flashbacks, emotional numbness, avoidance of contact with the outer world with the fear of re-voicing the past and major depression characterized by low mood, loss of interest and suicidal tendencies.

#### PREVENTIVE MEASURES

Appropriately set preventive measures are required to curb inhumane attitude of the law enforcement. Check on the police excesses is already in place in the Code of Criminal Procedure, a special provision is made in CrPC under sub-section (1) of Section 176 of the Code, when a person dies while in police custody, a magistrate may hold an inquiry into the cause of death. The recent amendment made in 2005 extended the ambit of the Sec 176 to disappearance and custodial rape also. When a person is killed in an encounter or in police custody or in exchange of fire, inquiry shall be conducted by a judicial magistrate and Section 176 of the Code must be made applicable to all the above said cases because as the law stands now it applies to custodial deaths only, but not to deaths caused in exchange of fire or in encounter. Torture and other cruel, inhuman or degrading treatment or punishment are particularly serious violation of human rights and, as such, are strictly condemned by international law. The Convention entered into force on 26-06-1987. The Government of India should ratify the Convention against Torture and other forms of Cruel Inhuman and Degrading Punishment or Treatment, which was signed by India on 14 October 1997.

The NHRC's revised guidelines regarding encounter deaths in police rules and manuals should be codified and the procedures should be implemented and officials should be trained accordingly. In particular, the NHRC and SHRC should be notified of any custodial death or "encounter killing." And the deceased's body should be sent for post-mortem examination without exception and a written copy of the post-mortem examination should be provided to the deceased's family within 24 hours of the examination. An independent internal affairs or "professional responsibility" unit should be established at the state level to

promptly and impartially investigate, within a one-year mandatory time limit, all cases of custodial torture and death, and all police shootings that result in death. Incentives for better policing through increased opportunities for promotion for junior- and low-ranking police should be created. As a national body working in favour of Human Rights the NHRC should yield more power in support of cases where police officers abuse their authority.

### CONCLUSION

Amending the Evidence Act to make inadmissible any evidence obtained on the basis of a police interrogation that involved the use of torture or cruel, inhuman or degrading treatment or other illegal coercion is a quint essential element. Replacement of the Section 197 of the Criminal Procedure Code, which requires government sanction for the prosecution of police for criminal acts including arbitrary detention, torture and extrajudicial killings could be another suitable way of dealing with the burning issue. If this seems difficult, then it is better to define "official duty" to exclude unconstitutional conduct such as arbitrary detention, custodial torture and ill-treatment, and extrajudicial killings.

National and State human rights commissions can end the practice of closing investigations upon ordering interim compensa-

tion to victims of rights violations. It is the formative responsibility of the government to take the legal, social, medical and psychological needs of victims of police violence and their families under consideration while the investigation is ongoing. An apt monitoring of whether the guidelines on custodial torture and encounter deaths are being implemented well is also necessary to be observed. To facilitate independent investigations into alleged violations, the government should focus on raising the number of investigative staff and also concentrate on improving their efficiency. Create a unit devoted to have an overlook on the police that is authorized to respond to complaints of ongoing violations by visiting police stations. Custodial crimes are a social menace which needs to be tackled proper through framing and application of stringent norms.

### FINDINGS

The statistical study depicts a very clear picture of the rampant presence of Custodial Violence and the work was also successful in meeting with the objective of identifying the tremendous effect of the Custodial Violence on its victims as well as suggesting measures to overcome its aftermath and also to concentrate on its prevention.

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