



## **Genesis of Custodial Violence in India: A Socio- Legal Analysis**

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### **Abstract**

*Custodial violence is an apparatus is used to impose the one will on another and it is a heinous torture towards the arrestee which creates a form of mental and physical impact to the person. This violence is the worst type of human right violation which impacts upon the basic roots of the human society and it promotes the desirable behavior of human being in society and prevents the undesirable behavior of human being in the society. The Universal Declaration of Human Rights (1948) under the aegis of newly formed United Nations, which was perhaps the turning point in the history of humanity as it recognized and defined Human Rights in its various contours on a global scale and has since been elaborated in subsequent international treaties, regional human rights declarations, national constitutions and laws.*

*But after analyzing various dehumanizing torture, humiliation, physical violence and death in custody has alarming the serious question about the credibility of law implication and criminal justice administration. The present study deals with understanding the root cause which lead to custodial violence and the various ways through which this grave injustice can be prevented.*

**Keywords:** Custodial Violence, Human Rights Violence, Torture, Criminal Justices System, Constitutional Safeguards and National Human Rights Commission.

**“Torture is a wound in the soul so painful that some-times you can almost touch it but is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy, including yourself.”-**

**“Adriana P. Bartow”**



## **Introduction**

‘Human rights’ denotes the basic rights and privileges that naturally belong to an individual just by the virtue of being human. Human right is a form of natural rights which are ‘universal and inalienable’ which usually include but not limited to right to life and liberty, freedom of thought and expression, and equality before the law irrespective of nationality, race, religion, sex, or any other discriminatory factors. The term Custodial violence, “Custody” which is not defines by procedural law but according to dictionary meaning is, the legal right and duty to care of someone and “Violence” means the behavior of someone which harms or damage physically or used energy and in layman’s language is ‘cruelty’, ‘atrocities’, ‘hurt’.

The right to life and personal liberty are guaranteed by Article 21 of the Indian Constitution, and this is further supported by many Supreme Court rulings (D. K. Basu Case) that emphasize torture's incompatibility with constitutional standards. Furthermore, torture is prohibited by international legislations like Universal Declaration of Human Rights 1948, Convention against Torture and Other Cruel Inhuman or Degrading Treatment of Punishment, 1984, The European Convention on Human Rights and Fundamental Freedoms 1950 and other International Covenants., many of which India has ratified, and effective steps to stop and deal with such acts are required. Reports of torture and fatalities in custody continue despite these legal safeguards, exposing a troubling pattern of abuse and impunity. The effects of torture and killings committed while a person is in custody go beyond the immediate pain they suffer.

The issue of custodial violence is not limited to India; it has become a global concern. For many years, the global community has been worried about it. This report highlights the urgent need for substantial changes to protect human rights, guarantee accountability, and rebuild public confidence in the criminal justice system in light of the current problems of torture in detention and fatalities in police custody in India.

## **Nature of Custodial Violence**

The term "custodial violence" describes when police officers or other authorities cause bodily or psychological harm to coerce confessions, frighten suspects, or impose compliance. This conduct is illegal under both national and international law and breaches fundamental human rights. The internationally accepted definition of torture states:



*“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 person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”<sup>1</sup>*

Custodial violence is when someone who has committed a crime is subjected to physical or psychological abuse while in the custody of the police or courts. Suicide and medical treatment-related fatalities were among the causes of the majority of the deaths in custody that were not related to torture. The fact that custodial violence has raised concerns about human rights is one of its main problems. One of the several underlying challenges in a democratic nation is this crime, which is an outrage against humanity. Although there are a number of variables that contribute to fatalities in police and judicial custody, such as overcrowding, starvation, unsanitary conditions, and a lack of medical treatment, custodial violence continues to be the leading cause of death in jails and lock-ups.

The worst human rights abuses, according to numerous human rights activists and social workers, occur during an investigation when police frequently use third-degree tactics, such as torture and arrest techniques, in an attempt to obtain evidence or confessions. These tactics are either not documented or refer to the deprivation of liberty as "prolonged interrogations."

Custodial violence can be classified into physical, psychological and sexual torture.

### ***Physical torture***

Methods of physical torture includes punching, slapping, beating, forced body positions, stretching limbs, suspension, constraint of movement, burning with cigarettes and caustic substance, cutting with sharp instruments, electric shocks, mutilating body parts, chemical exposures in wounds, dental torture and starvation.<sup>2</sup>

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<sup>1</sup> Article 1, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>2</sup> Nithya Ramakrishnan, *In custody: Law, Impunity and Prisoner Abuse in South Asia 5* ( Sage Publication Ltd., 2013).



***Psychological torture***

A person is put through mental torture by threatening to harm or kill the victim or his relatives or friends, forcing him to hear or witness others being tortured, forcing him to harm others, violation of religious beliefs and humiliation.<sup>3</sup>

***Sexual torture***

Custodial rape is another kind of torture faced by victims. Custodial rape can be defined as rape perpetrated in state owned institutions like prisons or jails by person in charge of such institution. Other forms of sexual torture include sexual harassment, forced impregnation and virginity testing.<sup>4</sup>

**Causes of Custodial Violence:**

The main causes of custodial violence are as follows-

- (a) Police officer is not trained properly for collection of evidences by use of modern scientific methods of investigation. They used third degree methods for collecting evidences. Third degree of methods of torture and custodial deaths has become an intrinsic part of police investigation.
- (b) India lacks stringent legislation to effectively punish individuals responsible for custodial violence.
- (c) Excessive work load, long hours of duty and pressure for speedily completion of investigation creates frustrations, anguish and anger in police officials, which manifests in custodial violence against helpless detainees.
- (d) Structural deficiencies in the criminal justice system, such as overcrowded prisons and understaffed facilities, create conditions favourable for violence.
- (e) The police officials are also not properly trained and educated about importance of human rights and human dignity.
- (f) The prison system in India is typically opaque, with limited transparency, providing opportunities for abuse to go unchecked
- (g) Corruption and political rivalry are also a major cause of custodial violence because police officers or officials have enormous power of arrest and detention.

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.



(h) The prison system in India is typically opaque, with limited transparency, providing opportunities for abuse to go unchecked.

(i) Lack of Implementation of International Standards: While India signed the United Nations Convention against Torture in 1997, its implications are not consistently enforced within the country.

### **Judicial responses against to Custodial Violence**

The Indian judiciary played a crucial role in preventing custodial torture through directives issued in various cases, including D.K. Basu case<sup>5</sup>, Arnesh Kumar case<sup>6</sup>, Sunil Batra case<sup>7</sup> and others. In Arnesh Kumar v. State of Bihar, the Supreme Court issued guidelines to prevent unnecessary arrests and detention by police officers and Magistrates. In a cognizable offence, the police officer shall serve notice to the accused to appear before him. He shall submit the checklist stating the reasons for such arrest while producing the accused before the Magistrate. After perusing the checklist, the Magistrate upon being satisfied with the reasons mentioned in the report shall detain the accused.<sup>8</sup>

### **Nilabati Behera vs. State of Orissa, 1993**

(a) **Facts:** Suman Behera, the petitioner's son, was arrested by the police and found dead on the railway tracks with multiple injuries the next day. The police claimed he had escaped from the police station.

(b) **Issues:** Whether the victim suffered injuries due to custodial violence and whether the police were liable for the death.

(c) **Judgment:** The Supreme Court in Nilabati Behera case found that injuries were inflicted while the victim was in custody, indicating custodial violence. Compensation of Rs. 1,55,000 was awarded, with the court stating that the state, not the police, was responsible for providing compensation.

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<sup>5</sup> (1997) 1 SCC 416.

<sup>6</sup> (2014) 8 SCC 273.

<sup>7</sup> (1978) 4 SCC 494.

<sup>8</sup> <https://www.sconline.com/blog/post/2024/03/23/custodial-torture-in-india-intersection-of-criminal-law-and-constitutional-rights/>.



DK Basu case recognized custodial violence and police brutality, emphasizing that it is an attack on human dignity. The court laid down 11 guidelines to be followed during arrests to protect the rights of arrested individuals. Some of these are:

- (a) Police personnel must wear name tags with their designations.
- (b) An arrest memo must be prepared, signed by the arrestee and attested by a family member or respectable person from the locality.
- (c) Arrestees have the right to inform a friend or relative about their arrest.
- (d) Major and minor injuries must be recorded at the time of arrest and signed by both the arrestee and the police officer.
- (e) Arrestees may meet their lawyer during interrogation.

### **Joginder Kumar vs. State of Uttar Pradesh, 1994**

- (a) **Facts:** The petitioner, an advocate, was illegally detained after being called for questioning by the police and his family was misled about his whereabouts.
- (b) **Issue:** Whether the police were guilty of illegally arresting the petitioner.
- (c) **Judgment:** The Supreme Court in Joginder Kumar vs. State of Uttar Pradesh held that arresting someone without justification is illegal and that police powers should not be misused for illegal purposes.

### **Rudul Shah vs. State of Bihar, 1983**

- (a) **Facts:** Rudul Shah was detained in prison for over 14 years after his acquittal. A writ of habeas corpus was filed demanding his immediate release and seeking compensation.
- (b) **Issue:** Whether the detention of the petitioner was justified and if compensation should be awarded.
- (c) **Judgment:** The Supreme Court in Rudul Shah v State of Bihar held that the detention was unjustified. It emphasised that if an individual's fundamental right to liberty is violated by the State, the individual is entitled to compensation. The Government of Bihar was ordered to pay Rs. 30,000 in addition to Rs. 5,000 already paid.



In *Sunil Batra v. State (UT of Delhi)*<sup>9</sup>, the Supreme Court took suo motu based on the letter alleging the torture inflicted by a prison warder upon another inmate. It examined the powers of jail authorities to keep a prisoner in a separate cell. However, Section 30(2) of the Prisoners Act, 1900<sup>10</sup> does not prescribe any criteria for separate confinement. Thus, the Supreme Court of India struck down the provisions of Section 30(2) of the Prisoners Act on the grounds of arbitrary and violative of prisoners right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

In custodial deaths, Magistrate is empowered to hold inquiry under Section 196 of the *Nagarik Suraksha Sanhita, 2023*<sup>11</sup>. At present, Magistrate includes both Judicial Magistrate and Executive Magistrate. However, in *People's Union for Civil Liberties v. State of Maharashtra*<sup>12</sup>, the Supreme Court held that the inquiry in the cases of death by police torture must be invariably conducted by Judicial Magistrate who is empowered to take cognizance of offences under Section 176 Cr.P.C. (now Section 196 of the *Nagarik Suraksha Sanhita, 2023*). It is opined that the inquiry of custodial deaths may be conducted by Judicial Magistrates rather than Executive Magistrates for a fair trial.

Recently in 202, the SC of India in the case of *Praramvir Sinigh Saini vs. Baljit Singh & others SLP (Criminal) No. 3543 of 2020* directed to state govt. to install of CCTV cameras in the police station. The Courts also reiterated the 9 directives it issued to the State Govt., these are as-

- a. State govt. to install CCTV Cameras in the police station.
- b. Deployment of at least two women constable in police station.
- c. Setting up of State Human Rights Commission.
- d. Setting up of Human Rights Courts.
- e. CCTV must be night vision and audio recording.
- f. Such recording should be preserved for a period of 18 months.

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<sup>9</sup> (014) 8 SCC 273.

<sup>10</sup> Prisoners Act, 1900, S. 30(2).

<sup>11</sup> *Nagarik Suraksha Sanhita, 2023*, S. 196.

<sup>12</sup> (2014) 10 SCC 635.



### **Conclusion**

Investigated the complex idea of custodial violence, looking into its different forms, underlying causes, and historical background. As a result, we can see how custodial violence appears from two different angles. The first involves the police actively engaging in violence against detainees, whether as a group or as individual personnel. The second type of police brutality, in which officers complicity enable the assault by quietly seeing the violence without doing action, is equally important but frequently disregarded.

We have repeatedly emphasized throughout our analysis how crucial it is to comprehend custodial violence in the context of the criminal justice system as a whole. This issue poses a major danger to fundamental principles such as justice, human rights, and due process. Custodial violence has had a lengthy and negative impact on India's law enforcement history, ranging from covert coercion to overt brutality. Custodial violence has a variety of causes, and in order to stop it, comprehensive reforms must be implemented.