

**CUSTODIAL VIOLENCE: DIGNIFIED VIOLATION  
OF HUMAN RIGHTS**

RISHIKA MAHAJAN

Student at LLOYD LAW COLLEGE, GREATER NOIDA.

*Best Citation* - RISHIKA MAHAJAN, CUSTODIAL  
VIOLENCE: DIGNIFIED VIOLATION OF HUMAN  
RIGHTS, 1 ILE HRLR 12, 2022

**ABSTRACT:-**

Custodial violence is the darkest stigma in Indian government which violates the rule of law and also violates the fundamental rights of prisoners. It is the duty of the police to protect the state from crimes like rapes, murders, cruelty and threats etc. Unfortunately, the same crimes are committed by the public officers with prisoners in police as well as in judicial custody. It has become one of the major issues of human rights concerns. According to data, there were at least 100 innocent people who died in 2017 with low conviction rates, but so far most of them have been out on bail. Again, there were 300 deaths due to torture by the police between 2008 and 2016 and result turned out to be zero convictions against them. There are many cases of custodial violence that are left unregistered and the reasons for the same are declared to be suicide. It is disappointing to know that after a long period of independence, we are debating on the very same topic but unable to get any solution out of it. The inhumane torture, humiliation, physical violence and death in custody have questioned the credibility of law implications and administrative authorities. Special laws on custodial violence are recommended by the National Human Rights Commission, Law Commission, and Supreme Court to the government of country. It is needed to restore public faith in our legal protectors. This paper aims to provide complete knowledge about this topic, how law framers

attempt to safeguard us, and what should be the solution to overcome this problem?

**INTRODUCTION:-**

*“Custodial violence is a naked violation of human dignity. The situation is aggravated when violence occur within four walls of police station by those who are supposed to protect the citizens.”<sup>61</sup>*

Custodial violence has emerged as a controversial topic in our country. The term Custodial Violence is comprised of two words: custody and violence. The word “custody” is not defined by law, but in the line with the dictionary, it is defined as a legal right and duty to care for someone. The word “violence” means that the act of somebody who causes physical and mental damage to the opposite person. It is also known as cruelty, hurt or grievous hurt. Custodial violence means any kind of torture or damage caused by the authorities including police, judicial or any other institutions that has a duty to take care of that particular space. It includes all aspects of maltreatment including mental and physical torture like burning with lighted Cigarettes, beating on the spine and bare sole of feet, forced ice slab torture, rape, illegal detention and disappearance from custody and many more. There was increment within the cases associated with custodial violence during lockdown which sparked rage across the country.<sup>62</sup> Recently in the Tuticorin district of Tamil Nadu, P. Jayaraj and J. Bennicks were the two victims of police brutality under police custody during the pandemic. There were four police officers and two Sub-Inspectors directly involved in this case. There have been 13 officers present at the station during the happening of incidents. The death was caused due to third degree torture given by the accused mentioned above. This incident has brought wrath to the entire nation. Therefore, a complaint got registered against them. Then, the state government has announced a compensation of 20 lakhs to the family and judiciary remains silent and has not done anything in this case. But there is a

<sup>61</sup> D.K Basu v. State of West Bengal, AIR 1997 SC 610.

<sup>62</sup> Admin, India: Annual Report on Torture 2020, National Campaign Against Torture (NCAT) (Mar.18,2021), <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/](https://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/)

question that arises; can this amount bring back the lives of both deceased?<sup>63</sup>

According to the National Campaign Against Torture, there were 1731 custodial deaths in 2019 or about five deaths daily. It clearly highlights the tormenting reality that legal protectors are disregarding the rules and regulations. The police are using third degree method in order to secure evidence or a confession which ends up in a transparent violation of human rights. There are ample of cases where prisoners died because of torture given by cops during the stage of an investigation, whereas the conviction rates are very low and attributed to reasons like suicide and death in the hospital during medication.

### **MEANING OF CUSTODIAL VIOLENCE**

Custodial violence can be defined as intolerable behavior which prisoners have to suffer during their police or judicial custody. Custodial violence has become a heinous crime where the police also commit crimes like rape inside a prison. According to the United Nations Special Reporter on Torture (2008), custodial violence has also been done to women and children including rapes, threats of sexual violence like molestation, stripping naked and sexual offences. For instance, a woman was gang raped by five policemen for ten days from May 9 to May 21, 2020, in Madhya Pradesh. However, incidents came forward on 10<sup>th</sup> October after five months.<sup>64</sup> The cases of police brutality highlight the situation where victims remain powerless and leave no room for eyewitness or documentary evidence. Third degree torture is a prominent violence that causes intolerable pain and may extend to the death of the person in custody during the pre-trial and after conviction period. This is simply a tyrannical abuse of the superior over helpless people. It also affects the lifestyle of the people, their families and society at large. They are unable to forget the mental agony and fidgety faced

during the time of custody and it becomes difficult for them to continue a normal life in fearful trauma.

The practice of custodial violence has been prevalent since pre-independence times, when Britishers maltreated Indian citizens through all forms of brutality, torture and humiliation. There was no check and balance in the British administration and it is still followed by police authorities with the full support of senior-level police officers, politicians and rich people. Custodial crimes are defined under the Custodial Crimes (Prevention, Protection and Compensation) Bill, 2006, where “custodial crimes means an offence caused against any arrested person or a person in custody when that person was in the custody of a police officer or a public servant who has power under any law to arrest and detain a person in custody during that period.” There are two types of custody under section 167 of CrPC<sup>65</sup>, police custody and judicial custody. Therefore, custodial violence can be divided into two ways:-

- Violence in police custody: - This type of violence occurs when police officers torture the prisoners for interrogation and find the evidence. They do not have any proper facilities to access their lawyers and medical examination.
- Violence in judicial custody: - This type of violence can be seen as many gang members misbehaving and treating other prisoners with cruelty if they avoid following their commands. As a result, it makes the victim commit suicide.

The person becomes the legal property of the state once he is taken into police or judicial custody. Unfortunately, police officers are losing this loop and committing custodial violence against the prisoners.

### **LEGAL FRAMEWORK**

Persons detained in custody have as much right to life as any other ordinary citizen. The purpose of interrogation does not

<sup>63</sup> Deeksha Saggi, Custodial Deaths and Role of Judiciary: A Critical Analysis, Latest Laws.com, (Jul. 25, 2020), <https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis/>

<sup>64</sup> Anonymous, MP: Woman alleges gang-rape by 5 cops for 10 days in lock-up, The Times of India, (Oct. 19, 2020), <https://timesofindia.indiatimes.com/city/bhopal/mp-woman-alleges-gang-rape-by-5-cops-for-10-days-in-lock-up/articleshow/78740127.cms>

entail infliction of injuries but the purpose should be that of an effective investigation. The authorities must try not to exceed the powers which have been given to them to perform their duties well and in a proper manner. If they fail to perform, they must be held accountable for the same. There are so many safeguards given to captives under the Constitution of India, Indian Penal Code, Criminal Procedural Code, Indian Evidence Act and other legislation.<sup>66</sup>

- **CONSTITUTION:-**

In the Constitution, Article 21 authorizes that no person shall be deprived of his life and personal liberty except any other procedure established by law. The right to personal liberty has a great role in the life of every individual and it includes the right to live with human dignity. This right is also applicable to people who are inside the lockups and no one can deprive them of their Fundamental Rights. Article 22 provides protection against arrest and detention in certain cases. It is stated that a person should be detained after being informed and produced before the nearest magistrate within 24 hours of such an arrest. If detention is increased, then it is required to get the permission of the magistrate for about 15 days but not more than that time. Personal liberty is not only limited to bodily restraint but also spread as to confinement to prison.<sup>67</sup> Both article 21 and 22 of Indian Constitution lay down the basic principle concerning protection from tyrannical actions.

- **CRPC & EVIDENCE ACT:-**

The Code of Criminal Procedure, 1973 provides some rights for detained persons such as:-

1. Right to be present before magistrate before 24 hours.
2. Right to get bail.
3. Right to get speedy trial.
4. Right to get medical examination before and after the detainment.
5. Right to know the ground of his case

Section 24 and 25 of the Indian Evidence Act stated that a confession made to a police officer cannot be proved against a person accused of any offence and confession caused by a threat from a person in authority, in order to avoid an irrelevant nature in criminal proceedings.

- **INDIAN PENAL CODE, 1864:-**

There are many provisions given under the IPC that curb policemen to extort confession by causing hurt (S. 330), prevent the victim from custodial rape (S.376 (2)). Clause 2 was added in section 376 which stated the punishment for custodial rape by police officers in custody.

- **PROTECTION OF HIGH RIGHTS ACT, 1993:-**

This Act was passed by parliament to meet the demand of national and international citizens to protect the human rights by law. The changing in society's needs and nature of crime demands an effective and efficient method for dealing with this issue and provides the justice through transparency and greater accountability.

- **NATIONAL HUMAN RIGHTS COMMISSION:-**

There are some guidelines of National Human Rights Commission, New Delhi, 2000 for pre-arrest, during arrest and post-arrest and also provides to enforcement of guidelines. It was requested to all states to adopt the guidelines provided by the National Human Rights Commission.

- **INDIAN POLICE ACT, 1861:-**

It is provided under section 7 and 29 that if any police officer is negligent in performing his duty and unfit to perform, he is liable to dismissal, penalty and suspension. This can be seen in light when police officer violating the constitutional and statutory provisions.

- **INTERNATIONAL MEASURES:-**

The Universal Declaration of Human Rights adopted by the United Nation on December 10, 1948 also provides

<sup>66</sup> Joginder Kumar v. State of U.P.,(1994) 4 SCC 260

<sup>67</sup> Kharak Singh v. The State of U.P.,(1964) SCR(1) 332.

provisions against cruel and inhuman punishment to any of individuals. Article 1 of UDHR, it states that all human beings have equal rights and should be treated equally before the law. India is one of the signatory countries to it. The International Covenant on Civil and Political Rights, 1966 also stated in the same manner. There are many other international instruments of Human Rights that deal with the major issue of Custodial Violence like the European Convention of Human Rights and Fundamental Freedom and the Declaration on Protection from Torture. These instruments have strictly restrained the tools which are used during investigation and interrogation.

### **JUDICIAL APPROACH IN INDIA:-**

In a democratic country, it is to be ensuring that citizens should enjoy their fundamental rights without any kind of threat to their livelihood, liberty and dignity. The Supreme Court and High Courts strongly opposed atrocities of committed by police officers against prisoners in police or judicial custody. The former S.C judge justice V. K. Krishna Iyer said, "Police Torture in custody is worse than terrorism as it is backed by the state" continuing that he also asked an essential question- "Who will police the police?" But, this question has never been answered by a judicial body.<sup>68</sup> The apex court observed that the power of police to arrest a person must be justifiable and the ruling of the court was made in the nature to reduce the violence, assault, beating, third degree methods and other kinds of violence to get information from the arrested person inside lock-ups.<sup>69</sup>

A contention asked by the layman is that, does the citizen slough off the fundamental Right after being arrested by policemen. There are some incidents showed how police officers have been brutally tortured people. Torturing is a rather reprehensible manner of investigation and a crude way of detecting crime to people who are helpless and have no power to retaliate. Judiciary should punish the investigation

officers who investigate in an unfair manner. They should strictly punish arbitrary activity during an investigation.<sup>70</sup>

Let's see how the judiciary plays a significant role to tackle such issues? The judicial courts have taken this crime in a very serious manner. It has essentially important for the judiciary to introduce effective and efficient methods to require machinery responsible for arresting a person. It is also needed to have transparency and accountability in the administration of India. Therefore, the Supreme Court of India has framed mandatory 11 guidelines that should be followed during arrest and detention cases and the protection of victims against such violence including Rape, Third level torture etc. inside prison.

The Supreme Court has stated in this case "the act of directing remand of an accused is fundamentally a judicial function. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner."<sup>71</sup>

Similarly, this was too happened in another case where the Apex Court deliver orders to establish authorities that keep an eye on police unwanted activity and also receive complaints too. However, this order was implemented in only 5-6 states of India.<sup>72</sup>

### **SUGGESTIONS:-**

Custodial violence is the merciless and cold-blooded offence committed by law enforcement on prisoners, under trials which include acts like physical, mental, psychological torture and sexual assault and also fake encounters. The growing incidents of custodial violence make the people in trauma to believe such authorities. Some serious steps should be taken to curb the cases of custodial violence and to ensure the responsibility of authorities towards the public at large to curb their inhuman methodology of working.

Firstly, the implementation of the recommendation should be accepted to curb the threat of custodial violence by the

<sup>68</sup> Prem Chand (Paniwala) v. Union Of India, 1981, AIR 613

<sup>69</sup> Joginder Kumar v. State of U.P.(1994) 4 SCC 260

<sup>70</sup> Public Prosecutor v. Shaik Ibrahim, 1964 (2) Cri.L.J 636

<sup>71</sup> Manubhai Ratilal Patel v. State of Gujrat (2013) 1 SCC 314

<sup>72</sup> Prakash Singh & ors v. Union of India,(2006).

authorities in India. The 273<sup>rd</sup> law commission report must ratify the draft of the Prevention of Torture Bill was introduced which includes strict punishment and covers other essential aspects as well. But, it was not enacted because it could lead to causes various amendments to criminal laws in India. The Model Police Act, 2006 and UN Convention Against Torture should modify and enact respectively for the safety of prisoners. The prisoner's Act should be translated into Hindi and regional languages and given to prisoners as well as family members of prisoners so that they can fight for their freedom and raise their voices against custodial torture.

Secondly, there are many possibilities when cases related to custodial crimes and rapes that are not freely expressed with a true medical report. The physical, mental and psychological tests should be conducted periodically. Indian Council of Medical Research and National Council of Rehabilitation should include the subject and provide mandatory training on the effects of torture, its causes and consequences in medical and Rehabilitation education.

Thirdly, politicians should not allow interfere in the criminal investigation process of the police. The investigation team should work free from all types of external or internal pressure. Political interference not only increases this issue but also harms the fundamental rights of people.

Fourthly, the District Police Administration should install CCTV cameras inside lockups and investigation rooms. There should be a zero-tolerance policy on custodial violence either serious or small. In India, it is required to wear body cams equipped with GPS as part of the uniform for every higher and lower rank police officer. This concept is also adopted by many foreign countries and resulted out to be very effective. We should also adopt these measures to keep an eye on our officials. It is essential that higher officers should surprise check once a week. It should make sure that they protect human rights, constitutional rights and legal rights.

Fifthly, the suggestions should be taken by various committees, NGOs and commissions to control the wave of custodial violence or death. It should be analyzed and implemented without any delay. Custodial violence should be clean in order to respect the emotions of offenders by behaving in a sensible and mature manner. It is essential to protect the people from naked violation of human dignity.

The judiciary should be work in a fair and equitable manner. The principle of natural justice should be followed. Justice should be delivered as fast as possible. There are so many statutory frameworks and judicial actions but compliance is also needed. The non-compliance with some provisions is a major cause of custodial violence and directly resulted in the miscarriage of justice. It is important to uphold and implement the procedures to provide fair and equitable justice to protect the human rights of the victims.

#### **CONCLUSION:-**

Torture and ill-treatment are prevalent throughout the country and also affect human dignity. It has been generally observed that frequent instances of human rights violations take place in an attempt to gather evidence or adduce a confession. Although, there are many laws and international bodied and commissions to control this problem but we are still away from our aim. Custodial violence has become common because police, bureaucracy and general people also take this crime as routine work of the police to interrogate the person. Custodial violence is one of the heinous crimes which violate human rights by law protectors.. It is really waning for the three pillars of democracy to work together until and unless a victim came out of it. It will not only harm the system but also affect the people's thinking about the democratic country. As per data, there were around 2,000 human rights violation cases (2000-2018) registered against the police. Union Ministry of Home Affairs (MHA), the country had witnessed 427 people die in police custody and 5049 died in judicial custody.<sup>73</sup> This data really makes a citizen upset that besides we are having so

<sup>73</sup> Vignesh Radhakrishnan, Sumant Sen, Naresh Singraveli, 5 States including Tamil Nadu recorded over 100 custodial death but zero convictions between 2001-18, DATA, (Jun. 30, 2020, 6:55 AM),

<https://www.thehindu.com/data/five-states-including-tamil-nadu-recorded-over-100-custodial-deaths-but-zero-police-convictions-between-2001-18/article31949326.ece>

many laws but still this issue is prevailing all around the world. It needs to ask a question ourselves why we need someone like Nirbhaya and Sheena Bora to make an amendment to fortify the codes.

**REFERENCES:-**

1. National Campaign Against Torture: Annual report on torture 2019.
2. Joginder Kumar v. State of Uttar Pradesh,(1994) 4 SCC 260.
3. Anonymous, MP: Woman alleges gang-rape by 5 cops for 10 days in lock-up ,The Times of India,(Oct. 19, 2020).
4. Dr. Anju Sinha(2020) Custodial violence And Human Rights: Constitutional Perspective, Ilkogretim Online - Elementary Education Online, Vol 19,Issue 2, pp. 2195-2205.
5. Prince Khatri, Human Rights and Custodial Violence: An Overview, Journal on Contemporary Issue of Law (JCIL) Vol 5 Issue 4.
6. Mohit Kumar, Suggestions To Curb The Menace Of Custodial Violence And Brutality: Targeting The Ill-Conceived Notion Of 'My Area, My Custody, And My Law,October 24,2021,11:55 AM.