

Study Relating to the Custodial Violence by Police In India

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Abstract: *The present investigation seeks to conduct a thorough analysis of instances of custodial violence nationwide, while also critically examining the underlying causes of custodial deaths in India. The study endeavors to contribute to the existing body of literature on "Study Relating To The Custodial Violence By Police In India". Within the study, custodial violence has been categorized into three distinct forms: physical, sexual, and psychological. Various factors contributing to custodial deaths have been identified, including suicide, fatalities resulting from medical treatment, pre-existing injuries, physical assault by law enforcement, attempts to flee custody, and road accidents during transportation. The study provides a range of recommendations aimed at enhancing police administration and advocating for necessary reforms in the conduct of law enforcement officials.*

Keywords: Custodial Violence, Police Brutality, Human Rights Violations, Police Accountability, Custodial Deaths, India, Law Enforcement Misconduct

I. INTRODUCTION

Custodial fatalities represent a significant concern nationwide. Instances of violence within police custody frequently result in the death of detainees. Prisoners are often subjected to severe mistreatment by law enforcement authorities, including torture and coercion leading to suicides. Reforms within police administration are urgently required, and the issue of custodial deaths remains a contentious topic for debate. These deaths instill fear among detainees, who endure both physical and psychological torment while in police custody. Custodial violence primarily refers to violence in police custody and judicial custody. In a democratic nation like India, governed by the rule of law, incidents of custodial violence evoke significant concern across society. Torture inflicts a deep and often irreparable wound on the spirit, one that is keenly felt yet difficult to heal. Articles 20, 21, and 22 of the Indian Constitution grant specific rights to detainees or individuals in confinement. The Supreme Court of India has recognized certain rights as inherent components of Article 21, including protections against handcuffing, the right to a fair and speedy trial, and access to free legal assistance. Custodial violence is causing widespread distress in society.

Types of Custodial Violence:

Physical Violence: This involves coercion and physical harm inflicted on detainees during interrogation processes.

Sexual Violence: Law enforcement officers may use disrespectful language that can severely impact the mental well-being of detainees. Sexual abuse can occur through verbal communication, violating the dignity of human rights.

Psychological Violence: Mental torture and withholding necessary information from detainees can have detrimental effects on their mental health. This form of violence may lead to long-lasting impacts on the psychological stability of detainees.

II. TRACING THE EVOLUTION OF CUSTODIAL VIOLENCE: A HISTORICAL PERSPECTIVE

Exploring the Legacy of Custodial Violence: An Historical Examination - Torment, murder, and other forms of abuse within police custody and prisons are not recent phenomena. Such practices have a long-standing history, dating back to ancient times. For instance, during the Mauryan era, rulers like 'Nand' Mahapadam subjected individuals, including Chandra Gupta Maurya's entire group, to extreme deprivation, providing only enough sustenance for one person to

survive. The Arthashastra, attributed to Kautilya, details various forms of torture, such as limb burning, feeding individuals to ferocious beasts, death by trampling with elephants and oxen, and mutilation.

During the Mohammedan period, the Shariat and Islamic law prescribed severe punishments for offenses, including amputation of thieves' hands and lifelong imprisonment, principles that continue to influence criminal law in Islamic nations. Additionally, the British Raj was notorious for its use of cruel detention methods, wherein individuals were arrested, assaulted, and tortured to extract false confessions, serving the interests of colonial rule.

The establishment of the police system during British rule, initiated in 1861, aimed to maintain order and control dissent at minimal cost to the colonial authorities. However, the police force often became synonymous with repression and brutality, unable to align with the interests of the majority population. Similarly, the "Jail Act" of 1894, which remains largely unchanged, grants significant power to prison authorities to punish inmates for violating prison regulations.

III. LEGAL MEASURES ADDRESSING CUSTODIAL VIOLENCE IN INDIA

To curb the inclination of law enforcement officers to resort to torture to extract confessions, the following provisions have been enacted:

Sections 330, 331, and 348 of the Indian Penal Code (IPC)

Sections 25 and 26 of the Indian Evidence Act

Section 76 of the Code of Criminal Procedure (CrPC)

Section 29 of the Police Act, 1861

IV. OTHER CONSTITUTIONAL PROVISIONS PERTAINING TO CUSTODIAL VIOLENCE

Protection from torture is recognized as a fundamental right under Article 21 (Right to Life) of the Indian constitution. Section 41 of the Criminal Procedure Code (CrPC) was amended in 2009 to introduce safeguards under sections 41A, 41B, 41C, and 41D. These provisions ensure that arrests and detentions for interrogation are based on reasonable grounds and follow documented procedures. They also mandate transparency in arrests to family, friends, and the public, and provide protection through legal representation.

Article 21 of the Indian Constitution stipulates that no person shall be deprived of life or personal liberty except according to the procedure established by law.

V. REASONS FOR CUSTODIAL VIOLENCE IN INDIA

- **Lack of Stringent Laws:** India lacks stringent legislation to effectively punish individuals responsible for custodial violence.
- **Political Interference:** Politicians often intervene to prevent culprits from facing legal consequences for acts of custodial violence.
- **Lack of Transparency:** The prison system in India is typically opaque, with limited transparency, providing opportunities for abuse to go unchecked.
- **Poor Prison Conditions:** Indian prisons are characterized by poor conditions, including overcrowding, severe staff shortages, and minimal security against violence within correctional facilities.
- **Pressure on Police:** Law enforcement officials often work under intense pressure, particularly in cases requiring quick resolutions to complex crimes. This pressure may lead to the use of violence to obtain evidence and confessions.
- **Cultural Influence:** There is a cultural acceptance of using violence to extract information or confessions, with some individuals in positions of authority resorting to brutality as a means to achieve their objectives.
- **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.
- **Time Constraints and Pressure:** Police authorities may face time constraints and pressure from higher authorities, leading them to resort to violence during interrogation processes.

VI. METHODOLOGY

This research paper exclusively relies on secondary sources to investigate the phenomenon of custodial violence and examine its legal ramifications. The study aims to understand the prevalence and implications of custodial violence within the Indian context. Secondary sources such as academic journals, newspapers, websites, and other relevant publications are utilized to gather data and insights. By drawing upon existing literature and reports, the research seeks to analyze the extent of custodial violence, its underlying causes, and the legal framework surrounding it.

VII. CUSTODIAL VIOLENCE IN INDIA

Custodial Violence in India has been a major human rights issue for decades now. It is one of the root obstacles to democracy and the development of human well being. According to National Crime Records Bureau (NCRB) data, between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded in India. Given below is the data released by the National Human Resources Commission for the month of April 2021 in regard to the complaints registered for custodial violence:

Nature of Incidents	No. of cases Registered	Disposed	Pending
CUSTODIALDEATH (POLICE) (Inc. Code 807)	13	8	301
CUSTODIALDEATH (JUDICIAL) (Inc. Code 301)	178	151	3029

The International Human Rights Day on 10th December annually marks the occasion of the signing of the Universal Declaration of Human Rights in 1948. Statistics on Custodial and Judicial Violence in India

- Between 2015-2019, 36% of deaths by suicide in police custody have been reported
- 2014 onwards, physical assault by police has been recorded in only 6% of the cases
- In the last 10 years, 403 of 1,004 deaths (40%) in police custody are listed as due to “Hospitalisation/ Illness/ Natural deaths” – a majority of such deaths
- As per the Crime in Indian Report 2019 released by the National Crime Records Bureau, the following have been the major reasons for custodial deaths in 2019.

Legal Provisions for Custodial Violence in India

The following provisions were enacted to curb the tendency of policemen to resort to torture to extract confessions, etc.:

- Sections 330, 331 & 348 of Indian Penal Code (IPC)
- Sections 25 & 26 of the Indian Evidence Act
- Section 76 of Code of Criminal Procedure (CrPC) and Section 29 of the Police Act, 1861 Other important constitutional provisions are as follows:
- Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution
- Section 41 of the Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation
- Article 21 of the Indian Constitution provides that no person shall be deprived of life or personal liberty except according to the procedure established by the law

VIII. DISCUSSION

The study revealed that the highest number of custodial deaths occurred in Maharashtra. The lack of compassion among police personnel is cited as a primary cause. Additionally, there is a lack of stringent legislation to prosecute police officers responsible for these deaths, constituting a violation of human rights. It is imperative that all individuals uphold the principles of humanity and respect the dignity of others. Several Human Rights Commissions have proposed numerous reforms aimed at holding accountable those responsible for deaths in custody. These reforms must be implemented, and law enforcement personnel should undergo training to interact with detainees in a humane manner.

IX. RESULTS

According to the aforementioned study, it is evident that various judicial decisions, orders, and directives have been implemented to enhance transparency and establish accountability within law enforcement agencies. Custodial cruelty or mistreatment represents a clear abuse of legal authority in an unethical manner, often targeting the marginalized, impoverished, and vulnerable. Such mistreatment can range from physical violence to psychological abuse, humiliation, coercion, invasion of privacy, and obstruction of access to urgent medical and legal assistance. Unfortunately, the Indian government tolerates torture in police detention facilities, viewing it as necessary for the judicial process and even condoning extrajudicial killings by federal agents. While it is commonly assumed that judicial authorities oversee court lock-ups, the reality is that magistrates often rely on police officers to execute their judicial duties. This grants police officers significant judicial powers, which is deeply concerning. From the moment of arrest until conviction, their authority extends, and instances have revealed instances where the autonomy of the judiciary has been compromised, contrary to the principles of the Constitution and the intent of the Criminal Procedure Code, 1973, which delineates the judiciary as separate from the executive branch. The findings from the study underscore the ample provisions provided by the Indian legal system for addressing custodial violence, which are adequately followed by various law enforcement agencies. However, ongoing custodial violence persists due to factors such as a lack of proper training and education, as well as negligence among some police officers towards legal regulations. Addressing these issues is crucial to effectively combatting custodial violence and upholding the principles of justice and human rights.

X. CONCLUSION

The primary objective of the present study is to conduct a critical analysis of cases involving custodial violence in India, while also examining the underlying reasons for custodial deaths in the country. The study aims to contribute to the existing literature on the subject of custodial violence by police in India. Within the study, custodial violence is categorized into three main types: physical, sexual, and psychological. Various factors contribute to custodial deaths, including suicide, fatalities resulting from hospital treatment, injuries sustained prior to custody, physical assault by police officers, attempts to escape custody, and road accidents during transportation. The study offers several recommendations to enhance police administration and advocate for necessary reforms in the conduct of law enforcement officials. It suggests that countries with lower per capita income are more susceptible to instances of custodial violence, but even economically advanced nations may disregard human rights and jeopardize humanity. Furthermore, cases of voluntary imprisonment also have implications for human dignity and social welfare. The Supreme Court has criticized instances of police torture and brutality against prisoners, under-trials, and accused individuals in various judgments. These criticisms underscore the need for reforms within law enforcement agencies to ensure the protection of human rights and uphold principles of justice and dignity for all individuals.

XI. SUGGESTIONS

Discrimination against suspects by police officers has unfortunately become a common practice. To ensure fair treatment, custodial procedures should be uniform for all suspects, regardless of their social status. Additionally, enhancing opportunities for information sharing between debriefed individuals and intelligence officers could be beneficial. The well-being of citizens can be safeguarded through diligent and professional conduct by law enforcement officers. Increasing police competence and ensuring independence in their operations through transparency and accountability can help combat the issue of custodial violence. While discipline and moral frameworks are essential in every profession, the police force already has an effective command structure that can be utilized to promote transparency among officers. Transparency not only fosters efficiency but also garners public support. To initiate reform, leadership within the police force should set clear expectations for desirable behavior, disseminating these directives throughout all ranks. By instilling a culture of transparency and accountability from the top down, law enforcement agencies can work towards eradicating custodial violence and promoting trust within the community.

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