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Custodial Violence in India: Legal Remedies and Human Rights Framework

~Kriti Jaiswal

Abstract

Custodial violence is the term given to inhuman treatment of individuals in judicial and police custody. Custodial violence refers to the physical, psychological, or sexual abuse imposed on individuals while they are in police. It is a violation of human rights and a serious breach of constitution and legal safeguards guaranteed in democratic societies. This paper also explores the twofold strategy for combating custodial violence: the legal remedies available under Indian law and the broader human rights framework both domestically and internationally. It discusses the role of the judiciary evolving principles of custodial justice. This paper also explores the historical context of custodial violence in India, and discusses the role of NHRC. Moreover, this paper will examine why India has failed to ratify the United Nations Convention Against Torture (UNCAT) and what impact it has on the enforcement of human rights.

INTRODUCTION

Custodial violence is the term we keep on hearing now and then and we also often read about it. Are there some law for custodial violence or are there any rights for the accused? This paper aims to question these questions and give a comprehensive view on issue of custodial violence.

Custodial violence is one of the worse crimes which is witnessed in India. It is any kind of violence imposed on a person while they are under detention by the police or other law enforcement agencies. This includes torture during interrogation, violence of basis rights, beating, or causing death in custody. The law enforcement authorities take law and order in their hand and snatch away the rights of prisoner and sometimes the crime of the law enforcement authorizes in covered by the right to private defence under section 36 of BNS as

in the case of *G.S. Mani vs. Union Of India*. Custodial violence is a dark stain on the judiciary, undermining both the rule of law and human dignity.

What is Custodial Violence?

“Custodial torture is a naked violation of human dignity and degradation which destroys, to a very extent, the individual personality”- Supreme Court of India *D.K Basu v. State of West Bengal* (1997)¹. Custodial Violence is a serious issue that demand attention due to its significant impact on human rights, law, order and other elements of the judiciary or the constitution. Violence in layman’s language harm, beating, abuse, attack, assault, torture, manhandling refers to physical and psychological agony so as to rebuff or get data, or to constrain one to admit to something. Brutal atrocities perpetuated by law enforcement agencies are growing at an unprecedented pace on prosecutions, offenders and convicts. Violence is defined as when someone uses force against to harm them. Torturing or imposing violence on a group of people or a person when they are in the police or court’s custody is predominantly known as custodial violence. Custody refers to both police and judicial. ‘Custodial’ refers to the manhandling or torture or abuse that is imposed on a person when they are under the custody of the police or judicial custody. Custodial abuse is a serious an issue in judicial custody as in police custody. Maltreatment and violent abuse are officials’ everyday routine leading to significant numbers of death in detention.

HISTORICAL CONTEXT

Custodial Violence is not a new trend but an old tradition firmly entrenched in the very policing system of the country. It was being used even prior to the establishment of the British rule to force confessions from suspects, recover property, and collect revenues without consideration for the individuals' rights. Nevertheless, it became officially established under the colonial rule since the whole policing process in this case was geared mainly towards protecting the interests of the colonial power and not those of the citizens. It was found out by the Madras Torture Commission of 1855 that tortures were commonly used by the police and revenue officials. Nevertheless, the colonial rulers passed the Police Act of 1861.

India opted for a constitution after gaining independence, and the rights to life and personal liberty were provided by the articles 21 and 22 of the constitution. However, the police system that was inherited from the colonials created a rift between the two. The Indian Penal Code of

¹ *D.K. Basu v. State of W. Bengal*, (1997) 1 S.C.C. 416 (India).

1860 had made the use of hurt in order to extract confession an offense under sections 330 and 331, while the Indian Evidence Act of 1872 had made the confession of police inadmissible under sections 25 and 26. However, various flaws like lack of proper forensics, political pressure, heavy workload, and pressure for quick results continue to fuel the practice.

In addition, there is no law on torture in India, which adds another dimension to the issue of torture. Even though India has signed the United Nations Convention against Torture (UNCAT) in 1997, it has neither ratified the UNCAT nor passed an anti-torture legislation. This means that the Indian Supreme Court has contributed significantly to protecting the rights of prisoners in cases such as *D.K. Basu vs State of West Bengal*, *Nilabati Behera vs State of Orissa*², *Prakash Singh vs Union of India*³, and *Paramvir Singh Saini vs Baljit Singh*⁴.

Custodial violence involves actions like torture, sexual violence, and custodial death, constituting some of the most serious human rights violations. As per the data released by NCRB, the total number of custodial deaths in India between 2001 and 2018 is 1,727. During this time frame, only 26 police officers have been found guilty of involvement in custodial violence. In 2018, out of a total of 70 custodial deaths, only 4.3% were recognized as cases where individuals died from physical assault injuries administered by law enforcement officers⁵.

“Some news related to custodial violence”

. Thoothukudi in Tamil Nadu case⁶

In 2020, the State of Tamil Nadu experienced the most recent case of violence against inmates. The police detained Jayaraj and his son Fenix in order to investigate their possible violations of the COVID-19 lockdown regulations enforced by the Indian government. They died as a result of the cops torturing and sexually abusing them. The police officers beat the two alternately over the seven hours of torture. The violence was increased by the fact that they were naked.

² *Nilabati Behera v. State of Orissa*, (1993) 2 S.C.C. 746 (India).

³ *Prakash Singh v. Union of India*, (2006) 8 S.C.C. 1 (India)

⁴ *Paramvir Singh Saini v. Baljit Singh*, (2021) 3 S.C.C. 184 (India).

⁵ Deepshikha Kataria¹ and Maharshi Kumar Kasoudhan², *The Custodial Deaths in India*, Vol-16, Iss2 (2026): 116-121

⁶ Shephalika Srivastava, *Custodial Violence: Horrendous Crime in a Civilised Society*, Vol. 5 Iss 5; 195, 195 – 210(2022)

. Custodial torture and deaths in Uttar Pradesh

In October, at least two families in U.P. alleged that one of their members had died due to custodial torture. Mohit Pandey, 32, had got into a minor dispute with their neighbour, Adesh Kumar, over a few thousand rupees. At 7 p.m., the police arrived and whisked Mohit away to the Chinhat police station in Lucknow.⁷

. Priyanka Reddy case of Hyderabad

Four men were arrested in another instance on charges of killing and raping a 27-year- old veterinarian. Around the nation, there was intense indignation in response to the rape news. During the course of the investigation, the police opened fire on the suspects, killing them. This sparked worries about violence against inmates, and a probe was launched. A panel led by former Supreme Court Judge V.S. Sirpurkar concluded that the police had shot the defendants intending to kill them. The panel suggested charging the ten police officers involved with murder.

• Case of Kanpur; Vikas Dubey

A thug named Vikas Dubey was just taken into custody for the murder of eight police officers in Kanpur. The following day, while he was being transported, the automobile carrying him had an accident and flipped. According to the police, Dubey grabbed his revolver and attempted to get away from the officer who was repairing a flat tire. The police were prompted by this, thus he had to be shot. There have been other hints that point to the fact that this was a manufactured incident of custodial violence.⁸

Right of the accused

A person in custody of the police, an under-trial or a convicted individual does not lose his human and fundamental rights by virtue of incarceration. In the matter of *Inderjeet v. State of Uttar Pradesh*, the Supreme Court held that prison rules authorizing abuse, coercion, or other departures beyond judicial approval are unduly sweeping and unconstitutional. It also explained that prisons should not apply unjustifiable physical or psychological constraints on under trial or convicted inmates, particularly when the acts constitute inhumane treatment, as

⁷ www.thehindu.com, Mohit Pandey vs. State of Uttar Pradesh

⁸ Prisha Jain, Custodial Violence And Its Impact,(2024)

highlighted above in *Sheela Barse v. State of Maharashtra*⁹ The rights of the accused, include the right to a fair trial, due process; the right to seek redress or a legal remedy, and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defense, and the right to vote. Following Articles preserves the right of the accused:-

Article 20- “(1) No person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. (2) No person shall be prosecuted and punished for the same offence more than once. (3) No person accused of any offence shall be compelled to be a witness against himself.”

2. Article 21, “no person shall be deprived of his life or personal liberty except according to the procedure established by law.”

3. Section 58 in Bharatiya Nagarik Suraksha Sanhita, 2023 (Section 57 in Crpc, 1973)

For the purpose of the current discussion, Articles 22(1) and 22(2) of the Indian Constitution contain significant protections against the misuse of arrest and detention authority. Article 22(1) guarantees that whoever is arrested has the right to consult and be represented by a legal counselor of their own choice. This right cannot be refused, and the person should be given intimation of it at the earliest possible opportunity when detained. Article 22(2) requires that all individuals arrested and detained be produced before a Magistrate within 24 hours of the arrest. The appearance shall be made without undue delay, and detention after this time is not allowed except with the order of a Magistrate.

Bharatiya Nagarik Suraksha Sanhita, 2023

In order to ensure that processes for arrest and detention for investigative reasons have legitimate grounds various steps have being taken by the government and judiciary body, The Andhra Pradesh High Court has held that the provisions of Section 47(1) of Bharatiya Nagarik

⁹ Dr. Ishita Chatterjee, CUSTODIAL VIOLENCE AND THE LAW, VOLUME:10, ISSUE:6(8),38-41(2021)

Suraksha Sanhita (BNSS) are mandatory and peremptory, and a violation of this provision can only result in a declaration that the arrest and subsequent detention are invalid.¹⁰ Under Section 47(1) of BNSS states: “47. Person arrested to be informed of grounds of arrest and of right to bail. (1) Every police officer or other person arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.” Custodial violence is curtailed through provisions such as Section 35 of the BNSS, which mandates humane arrest procedures, Section 48, which ensures that the arrested person is informed of the grounds of arrest and their rights, and Section 176, which penalizes public servants for inflicting injury or torture to extract a confession.

Bharatiya Nyaya Sanhita, 2023

Custodial violence refers to violence, torture, or murder of an individual in the custody of police or law enforcement officials, and is a serious constitutional safeguard under Article 21 of the Indian Constitution. The Bharatiya Nyaya Sanhita (BNS), 2023, has provisions in place that in fact serve such misbehavior on the part of government functionaries. Provisions like 106 (death in custody due to torture), 113 (grievous hurt for the purpose of eliciting confession), and 197–199 (abuse of authority and concealment of facts) attempt to act against acts of brutality, coercion, and cover-ups in custody. Constitutional protection and Supreme Court judgments in *D.K. Basu v. State of West Bengal* and these provisions form a vital legal framework against custodial abuse. But even in the face of such legal actions, instances of custodial torture continue to rise, citing the imperative necessity of stricter implementation, supervision, and police accountability to uphold suspected persons' rights and dignity.

Some Landmark Cases Related To Custodial Violence

1. In *D.K. Basu v. State of West Bengal* (1997)

In *D.K. Basu v. State of West Bengal* (1997), the Supreme Court treated a letter written by D.K. Basu, highlighting increasing custodial deaths, as a Public Interest Litigation. The writ petition sought the Court's intervention to prevent torture and custodial deaths at the hands of the police. The State argued that the existing legal framework was sufficient, but the Court saw a pressing need for reform. Observing the violation of Article 21, the Court issued 11 binding directions to regulate arrests and grant detainee rights, including medical inspection, arrest

¹⁰ www.livelaw.in

memos, and access to attorneys. The case remains effective in safeguarding human rights during detention.

2. In Nilabati Behera v. State of Orissa (1993)

In Nilabati Behera v. State of Orissa (1993), the petitioner Nilabati Behera filed a writ petition when her son, Suman Behera, died due to police brutality in police custody. His body was found on railway tracks with multiple injuries. It was decided by the Supreme Court that the right to life under Article 21 includes protection from custodial violence and that the officials of a State are liable for such death. The Court awarded compensation to the mother, ruling that monetary compensation is a suitable remedy for violation of fundamental rights. The case went on to become a cornerstone in making the State responsible for custodial deaths in India.

3. In Prakash Kadam v. Ramprasad Vishwanath Gupta (2011),

In Prakash Kadam v. Ramprasad Vishwanath Gupta (2011), the Supreme Court held a case of police fake encounter killing. Senior officials and the accused police officers had allegedly killed an individual in a staged encounter on somebody's behest due to personal enmity. The Court vigorously condemned such cold-blooded police shootings, and averred encounter killings by policemen as nothing but murder in the eyes of the law. The judgment underscored the point that policemen cannot turn themselves into judge, jury, and executioner and that such acts water down the rule of law and constitutional protections.

4. In Sheela Barse v. State of Maharashtra (1983),

In Sheela Barse v. State of Maharashtra (1983), the Supreme Court addressed the issue of custodial violence and the rights of women prisoners. Journalist and human rights activist Sheela Barse moved petitions upon interviewing Mumbai prison women prisoners who accused male policemen of ill-treatment and sexual harassment. The Court took these allegations in a serious light and reaffirmed that female prisoners can be interrogated only in the presence of women police officers, and legal counsel and protection against custodial brutality are part of their fundamental rights under Article 21. The Court ordered that female suspects should not be accommodated in lock-ups without female attendants, and efforts should be made to preserve women's dignity and security while they are in custody. This decision was an important step towards reaffirming the rights of women prisoners and assuring humane treatment within the criminal justice system.

5. In State of Andhra Pradesh v. Challa Ramkrishna Reddy (2000),

In *State of Andhra Pradesh v. Challa Ramkrishna Reddy* (2000), the Supreme Court specifically indicated that although one may be in jail or police custody, he does not forfeit his fundamental rights. The case involved a death inflicted on an under trial prisoner by negligence and inadequate security within the jail compound. The Court ruled that Article 21 of the Constitution, guaranteeing the right to life and liberty, continues to apply, to convicts and under trial prisoners. It ruled that the State is responsible for the well-being and security of persons in custody and any violation thereof through custodial violence or negligence as a serious constitutional violation. The Court further held that the State is liable and can be compelled to pay compensation in such a situation. This case reiterated the principle that constitutional guarantees are applicable to all, including persons in custody, to hold the State accountable.

Some Legal Remedies For Custodial Violence

. Constitutional Remedies

Victims of custodial violence can directly approach the bench of High Court under Article 226 and Supreme Court under Article 32 of the Indian Constitution for enforcement of their fundamental rights, particularly the right to life and right to personal liberty under article 21. In the light of the implication of the terms of Life and Personal Liberty any type of custodial atrocity, hurt, caused, force exerted or deadly treatment during custody handed out to an individual who is under detention in the police custody are glaring violation of Article 21 in as much as, such treatment fails the test of fair procedure enunciated by the supreme court as a condition to legitimize the deprivation of personal liberty under Article 21 of the Indian constitution.¹¹

.Role Of Human Rights Commission

The National Human Rights Commission (NHRC) and the State Human Rights Commissions (SHRCs) play a crucial role in counteracting custodial violence and promoting human rights in India. They are vested with the jurisdiction to take suo motu cognizance of custodial deaths, torture, illegal detention, and other human rights violations. They can conduct independent investigations, inspect prisons and detention centers, summon officials for interrogation, examine evidence, and recommend to the government. The NHRC has laid down strict reporting guidelines for custodial death—requiring the concerned authority to report every such incident to it within 24 hours. Upon inquiry, the Commission can recommend monetary

¹¹ Dr. Kamasai SVM, *Judicial Dynamism and Custodial Violence*, Vol.12 No.12 (2021), 547-551

compensation to the victim or his dependents, initiate proceedings for disciplinary or criminal action against erring officers, and recommend changes in the system. While their suggestions are not binding in law, they have immense moral and political influence, tending to force the State to move. Through these mechanisms, NHRC and SHRCs become a necessary institution for accountability, transparency, and justice in custodial abuse cases.

Conclusion

Custodial violence continues to be cruel denial of human rights and blemish on India's democratic and legal system, guaranteeing dignity, due process, and the right to life under Article 21 of the Constitution. Despite several safeguards articulated by the Supreme Court in cases like D.K. Basu and vigilance structures like the NHRC and SHRCs, enforcement remains weak and accountability elusive. More than 1,888 custodial deaths occurred within a year in judicial and police custody that is five custodial deaths each day, according to the National Campaign against Torture (NCAT) Report 2022. NHRC records for 2021 also showed that there were over 151 custodial deaths in police custody during the same year alone, the majority of which had complaints of torture or neglect. These figures are indicative of a culture of impunity that pervades the country in which victims are mostly from marginalized or vulnerable communities. As a remedy, the nation needs urgent reforms — ratifying the UN Convention against Torture, enacting a comprehensive anti-torture law, and strict implementation of existing judicial guidelines. Custodial violence is not just a law and order issue; it is a test of India's commitment to human dignity, justice, and the rule of law.

