
CONCEPT AND HISTORY OF CUSTODIAL VIOLENCE IN INDIA

Lumina L, Sathyabama Institute of Science and Technology

“Torture is a wound in the soul so painful that sometimes 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

ABSTRACT

It is sovereignty that stands as a defining element of the state, distinguishing state from other institutions³⁸. The state which is bestowed with this sovereign power is entrusted with important function to uphold law and order while safeguarding the fundamental human rights of all individuals within their territory. However, problems arise when those with authority perpetrate crimes against the most vulnerable members of society. Custodial violence is one such instance where individuals granted with the responsibility to prevent crime misuse their power to commit offenses³⁹. After all, "Power corrupts, and absolute power corrupts absolutely"⁴⁰.

Custodial violence persists as a troubling phenomenon within India's criminal justice system, posing significant challenges to the foundational principles of justice and human rights⁴¹. This chapter delves into the concept and historical evolution of custodial violence in the Indian context, offering a comprehensive examination. Beyond mere physical abuse, custodial encompasses a range of offenses that violate the trust that people have in law enforcement and prison officials⁴². This issue traces its roots back to the historical fabric of medieval and ancient custodial systems, evolving through colonial authority and continuing to shape contemporary narratives surrounding abuse and justice in post-independence India⁴³. This chapter explains the fundamental causes of the widespread incidence of custodial violence and offers a thorough examination of its scope.

³⁸ Marume, Dr, Et Al. An Analysis of Essential Elements of the State, Volume 5, Issue 3, International Journal of Engineering Science Invention, Mar. 2016, PP.24-28.

³⁹ Gupta, 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." www.livelaw.in, 24 Oct. 2021.

⁴⁰ Lord Acton in a letter to Bishop Mandell Creighton, April 3rd, 1887.

⁴¹ Supra Note 11.

⁴² V. Sorna Lakshmi, Custodial Violence: Causes, Consequences and Preventive Measures, Volume 6, Issue 4, Journal of Emerging Technologies and Innovative Research, 2019, Pg. 14-22.

⁴³ Dr. Asifa Parveen & Dr. Naaz Akhtar Siddique, Historical Perspective of Custodial Tortures in India, Volume 8, Issue 8, Journal of Emerging Technologies and Innovative Research, 2021.

Through this comprehensive examination, the chapter lays the essential groundwork necessary for fostering a nuanced understanding of the concept of custodial violence.

Keywords: Custodial Violence, Violation of Human Rights, Forms of Violence.

2.1. Concept of Custodial Violence:

The term "Custodial Violence" is not explicitly defined in Indian statutes. It comprises two components: "custody" and "violence."⁴⁴

"Violence" denotes the state or trait of being aggressive, involving the use of extreme force without cause or restriction, or causing severe injury. It manifests as a process wherein an individual asserts superiority through force over another, intending to cause harm⁴⁵. This behaviour is aimed at inflicting injury upon another person or causing damage to property, irrespective of whether the harm is physical, mental, or otherwise⁴⁶.

Custody entails assuming control over another person⁴⁷. According to legal dictionaries, it refers to "charge" and encompasses the judicial or criminal safekeeping of an inmate⁴⁸. The Chamber Dictionary defines "custody" as the state of being detained by the police, arrested, or imprisoned⁴⁹. In the Legal Glossary Dictionary, custody is described as the act of imprisoning someone while they are under the legal authority of another person⁵⁰. While custody implies protection and guardianship, it does not inherently entail unpleasant experiences⁵¹. Rather, it signifies being under the surveillance of the police, with the primary objective of keeping the suspect within the jurisdiction of law enforcement agencies. In the case of **Chhotey Lal vs. State of Uttar Pradesh**⁵², clarified that custody extends beyond physical confinement to include individuals under police surveillance. Similarly, in **Bibachha Baitharu v. State of Orissa**⁵³, it was held that restricting a person's movement in itself constitutes custody.

⁴⁴ Supra Note 11.

⁴⁵ Salman Mekrani, "Custodial Death: A Legal Study," Vol. 5 Iss. 1, International Journal of Law Management & Humanities (2022) Pp: 1429 – 1447.

⁴⁶ Ibid.

⁴⁷ Sebastian, Manu. "Explainer: Judicial Custody and Police Custody." Wwww.livelaw.in, 4 Sept. 2019.

⁴⁸ P. Ramanatha Aiyer: The Encyclopaedic Law Dictionary with Legal Maxim (1992): Wadhwa & Company Nagpur, India.

⁴⁹ Chamber Dictionary: (1983) Allied Publisher p. 330.

⁵⁰ Legal Glossary (1988) Ministry of Law and Justice, Govt. of India.

⁵¹ Supra Note 34.

⁵² Chhotey Lal vs State of Uttar Pradesh, (1953) 1954 CriLJ 1445.

⁵³ Bibachha Baitharu v. State of Orissa, (1991) 1998 CriLJ 1553.

While "custody" and "arrest" are often used interchangeably, they have distinct meanings. Arrest involves forceful confinement by the police, typically in accordance with Section 46 of the Criminal Procedure Code⁵⁴. Custody, on the other hand, does not necessarily require arrest⁵⁵ and can occur when an individual surrenders before a court or magistrate. In the case of **Niranjan Singh vs. Prabhakar Rajaram Kharote**⁵⁶, Justice Krishna Iyer emphasized that custody applies not only when the police arrest an individual and produce them before a magistrate for remand but also when the accused voluntarily surrenders before the court or magistrate.

Judicial and police custody are the two categories of custody described in Section 167 of the Code of Criminal Procedure. The person being held by the police is subject to the jurisdiction of the police officer in charge of the police station. He is kept in the prison or cell in that police station. The police officer can interrogate and conduct investigation. Judicial Custody, on the other hand, is the detainment of the accused under the jurisdiction of the magistrate, typically following an order by the court. During Judicial Custody, the suspect becomes the responsibility of the court, and access to the accused by the police is granted only with the court's permission. The decision to place an individual in judicial custody is based on the public prosecutor's satisfaction that the suspect's custody is necessary for interrogation purposes.

After an arrest, police officers may detain an individual in police custody, for up to 24 hours before presenting them before a court. Following this, the accused is presented before the Magistrate as per Section 167 of the CrPC, who may order further detention. Police custody is limited to a maximum of fifteen days as per Section 167(1) of the CrPC. However, any extension of detention beyond the initial fifteen-day period is possible in judicial custody provided compelling grounds are shown by the court⁵⁷.

The term "custodial violence" denotes violence perpetrated by law enforcement personnel against individuals under their custody or following arrest. Described as an act of inhumanity born out of a perverse desire to inflict suffering without fear of retaliation, it represents a senseless display of dominance and physical prowess over those rendered powerless⁵⁸. As defined by the Law

⁵⁴ Section 46, Criminal Procedure Code, 1973.

⁵⁵ Supra Note 36.

⁵⁶ Niranjan Singh vs. Prabhakar Rajaram Kharote, AIR 1980 SC 785.

⁵⁷ Section 167(1), Criminal Procedure Code, 1973.

⁵⁸ Supra No. 34.

Commission of India, custodial violence occurs when a public servant commits a crime against an individual in custody or arrested⁵⁹. Dr. S. Subramanian broadens this definition, encompassing any employment of force, threat, or psychological coercion.⁶⁰ Justice B.P. Jeevan Reddy observes that the spectrum of custodial violence spans torture, death, rape, and excessive beatings in police custody⁶¹. Justice Krishna Iyer emphasized the egregious nature of such acts, asserting that nothing undermines constitutional values more profoundly than state officials disregarding human rights and subjecting individuals in custody to violence⁶².

Victim of custodial violence often endure torture. Every deliberate act that results in extreme bodily or mental anguish or suffering is considered torture. This encompasses actions aimed at extracting information or confessions, punishing individuals, coercing or intimidating them, or discriminating against them. The Prevention of Torture Bill in both 2010 and 2017 aimed to criminalize custodial torture, defining it as inflicting grievous hurt or threatening one's life, limb, or health.

In the case of **D.K. Basu v. State of West Bengal**⁶³, Judge Dr. A.S. Anand, described custodial torture as "a naked violation of human dignity and degradation," emphasizing its destructive impact on individual personality. It is an organized assault on human dignity, and civilization always declines when human dignity is violated. This was subsequently cited in the **Mehmood Nayyar Azam v. State of Chandigarh**⁶⁴ case. Nevertheless, law enforcement agencies often describe custodial violence as 'sustained interrogation,' 'questioning,' or 'examining,' thereby minimizing the severity of the systemic issues involved⁶⁵.

Police officers are authorized to question or apprehend suspects on the basis of reliable information; however, it is their responsibility to make sure that these measures are carried out in a way that respects both the law and human rights. Any interrogation must be carried out without

⁵⁹ Law Commission, Custodial Crimes (Law Com No 152, 1994).

⁶⁰ Dr. S. Subramanian: Human Rights International Challenges (2004), Manas Publications, Delhi (India).

⁶¹ Justice B.P. Jeevan Reddy, a paper presented in seminar: "Custodial Crime, An Affront to Human Dignity, Human Right Year Book 2001, Universal Law Publication Pvt. Ltd., New Delhi, India.

⁶² Kishore Singh v State of Rajasthan AIR 1981 SC 625.

⁶³ Id.

⁶⁴ Mehmood Nayyar Azam v. State of Chandigarh (2012) 8 SCC 1.

⁶⁵ R.S Saini, Custodial Torture in Law and Practice with Reference to India, 36 Journal of the Indian Law Institute 167, 166-192(1994).

resorting to assault or violence against the individual being questioned⁶⁶. When law enforcement officials engage in abusive behaviour towards individuals under their control, it constitutes a violation of the principles underpinning our judicial system, undermining the very foundation of justice and fairness.

2.2. Types and Manifestation of Custodial Violence:

Custodial violence in India is a pervasive issue that takes on various disturbing forms. Many of us are familiar with the high-handed behavior of the police, often witnessed in instances where individuals are slapped or beaten mercilessly with lathis in the name of maintaining law and order. This type of violence remains a significant cause of mortality in prisons and lock-ups, worsened by problems like overcrowding, malnutrition, unhygienic conditions, and inadequate medical care⁶⁷. The term "custodial violence" denotes a spectrum of abuses, which can be categorized into various types. These include:

Physical Abuse: In the context of custodial violence, physical abuse refers to a variety of abusive behaviors. This may involve the usage of excessive force during arrests or confinement, as well as the perpetration of beatings and torture against detainees. Inmates subjected to physical abuse may endure brutal beatings, whippings, or even electric shocks, often resulting in fatalities or severe injuries. Of particular concern is the occurrence of sexual assault, wherein victims are subjected to rape or sexual harassment by public officials⁶⁸.

Emotional and Psychological Abuse: Emotional and psychological abuse within the realm of custodial violence often involves the use of threats and intimidation tactics to instil fear and exert control over detainees. This form of abuse inflicts significant mental anguish on individuals, leading to enduring psychological trauma due to experiences of intimidation, humiliation, and prolonged isolation. The deleterious effects of such abuse can have far-reaching consequences, impacting the mental well-being and overall health of detainees⁶⁹.

⁶⁶ Bhagwan Singh v. State of Punjab, (1992) .1 sec 249; JT 1992(3) SC 216

⁶⁷ Supra Note 34.

⁶⁸ Economic and Political Weekly, Vol. 51, No. 53 (DECEMBER 31, 2016), p. 8 Published by: Economic and Political Weekly.

⁶⁹ Ibid 31.

Verbal abuse: The use of dehumanizing language, insults, and verbal threats directed at individuals in custody constitutes a form of psychological abuse within custodial settings. This behaviour undermines the dignity and rights of detainees, subjecting them to demeaning treatment and psychological distress. Additionally, discriminatory remarks based on race, ethnicity, gender, or other attributes further increases the harm inflicted on individuals, perpetuating systemic inequalities and reinforcing oppressive power dynamics.

Denial of Basic Rights: Denial of basic rights in custodial settings refers to instances where individuals are deprived of fundamental legal protections and access to necessary services. This may include obstructing their right to legal counsel or impeding their ability to receive a fair trial. Additionally, withholding essential medical care can result in physical and psychological harm, violating the right to health and well-being.

Unauthorized Arrest and Detention: Unauthorized arrest and detention occur when individuals are apprehended without adhering to proper legal protocols or without valid grounds. This may involve arbitrary arrests made without following due process or without sufficient evidence to justify the arrest. Additionally, individuals may be unlawfully detained for prolonged periods without being formally charged or presented before a judicial authority.

Forced Confession: Forced confession refers to the practice of obtaining confessions from individuals through coercion, threats, or torture. Through physical or psychological coercion, people may occasionally be forced or deceived into confessing to crimes they did not commit. This can include subjecting individuals to torture, intimidation, or prolonged interrogation until they provide a confession, regardless of its accuracy.

Inhumane Conditions of Detention: Inhumane conditions of detention refer to the substandard living conditions experienced by detainees, characterized by overcrowding, inadequate amenities, and poor hygiene standards. Detainees could be kept in cramped spaces with restricted access to basic utilities like running water, hygienic restrooms, and sufficient air conditioning. These conditions can lead to health hazards, including the spread of infectious diseases and mental distress. Furthermore, the lack of basic hygienic practices and sanitation infrastructure worsen the already dire situation, posing serious risks to the well-being and dignity of detainees.

Other kind of custodial violence may include sleep deprivation, coerced confessions, fabrication of evidence, denial of basic rights such as access to food and other forms of mistreatment. Among these, police torture, commonly referred to as third-degree abuse, has emerged as one of the most prevalent and egregious forms of violence against detainees⁷⁰.

It is important to mention the report on the torture of political prisoners in India presented to the US House of Representatives' subcommittee on international relations in March 1976. The report outlined various forms of physical torture inflicted on individuals, including using heeled boots to stamp on the naked body, hitting the bare soles of feet with a cane, rolling a police officer on top of a big stick across the shins, making victims squat in a "Z" stance for hours, beating on the spine, striking with the butt of a rifle, giving hard, cupped-hand smacks on both ears till they bleed and pass out, poking live electrical cables via bodily indentations, forcing victims to lie nude on slabs of ice, burning with candle flames and lit cigarettes, making victims drink their own excrement after depriving them of food, drink, and sleep, stripping victims, painting their faces black, and parading them in public, holding victims down by their wrists, and putting them on an "aeroplane" by tying a long rope around their back and hauling the end over a pulley, leaving them hanging in mid-air⁷¹.

According to a 2019 report by National Campaign Against Torture (NCAT), the following torture methods were used for custodial brutality in 2019: pounding iron nails on the body; using a roller on the legs and consuming; using a technique called "falanga" in which the bottoms of the feet are beaten; extending the legs separated in inverse bearing; hitting in private areas; electric shock; pouring petroleum in private areas; applying stew powder in private areas; beating while wearing handcuffs; and puncturing the body with a needle. Other methods included thrashing after draping potential gain with limited options and legs, forcing them to have oral sex, using forceps to pinch fingernails, depriving them of food and water, beating them with iron bars, and suspending them between two tables with limited options and legs, forcing them to perform pressure position and kicking in the pregnant woman's belly. Other methods included peeing in the mouth, beating with

⁷⁰ Ibid.

⁷¹ Nirman Arora, Custodial Torture in Police Stations in India: A Radical Assessment, Vol. 41, No. ¾, Journal of Indian Law Institute, July-December 1999, pp. 513-529.

a hot iron pole, beating after stripping, embedding a hard, dull object in the back, and various other abuses and torture methods⁷².

Police officers these days' use methods of torture that would not leave any injury on the victim. Some of such methods include stretching the victim's legs apart and twisting his arms backward while his back was held immobilised, roller treatment – smooth wooden roller is placed on the thighs of a prostrate victim and two cops stood on the roller as it is rolled forward and backward and giving low-voltage shocks to the testicles of a man⁷³.

However according to NCRB data 2022 Majority of deaths occur due to suicide or illness. In 2022, among the total 75 deaths, 31 died by suicide and 32 by some illness⁷⁴.

Given that the majority of deaths in prison settings in 2022 were related to suicide or sickness, according to NCRB figures, it is imperative that the underlying reasons of these disturbing results be thoroughly investigated. Suicide and illness as leading causes of custodial deaths underscore systemic vulnerabilities within the criminal justice system. The prevalence of suicides among detainees raises concerns about mental health support and the stressors inherent in confinement. Concurrently, deaths from illness highlight deficiencies in healthcare provision and the need for improved medical attention within custodial settings.

Denying people in jail access to fundamental human rights like food, drink, medical treatment, or legal counsel exacerbates their suffering. Custodial violence can also encompass extortion and corruption by law enforcement personnel who abuse their authority for personal gain, in addition to these direct acts of violence. These varied manifestations underscore the pervasive nature of custodial violence and its profound impact on both the victim and society at large⁷⁵.

2.3. Reasons for Custodial Violence:

Custodial violence, a pervasive issue within the criminal justice system, arises from a multitude of factors. Among them, some key reasons include:

⁷² Ujjwal Singh, Custodial Violence in Modern India, ILE JLP, 1 (1) of 2023, Pg. 14-20.

⁷³ Asthana, N.C. "Why Police Brutality and Torture Are Endemic in India." *The Wire*, 13 Dec. 2021, thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india.

⁷⁴ See Annexure 4.

⁷⁵ Ameena R, A Socio-Legal Study of Custodial Violence with Special Reference to SCs/STs in India.

Structural Deficiencies: Structural deficiencies in the criminal justice system, such as overcrowded prisons and understaffed facilities, create conditions favourable for violence. Overcrowding creates tensions among inmates and limits resources, making it difficult for authorities to maintain order and ensure the safety of detainees. According to 2019 NCRB data on overcrowding in prison, most of the prisons are overcrowded and in Uttar Pradesh prisons are overcrowded by more than 175%⁷⁶.

Likewise, understaffed facilities struggle to adequately supervise and manage the inmate population, leading to lapses in security and an increased risk of violence⁷⁷. According to India Justice Report, prisons are understaffed by 33%.

Increasing Corruption: The Indian police force is often cited as one of the most corrupt institutions in the country, with corruption manifesting in various forms. Primarily, there are two prevalent types of corruption within the police force. Petty Corruption involves soliciting bribes or financial incentives from ordinary citizens in exchange for preferential treatment or overlooking legal violations. Examples include accepting bribes to ignore traffic violations or to expedite paperwork processes. Officers who accept promotions, bonuses, or other favors from political people in exchange for complying with particular demands or turning a blind eye to illegal activity are said to be compromised politically inside the police force. This form of corruption undermines the impartiality and integrity of law enforcement agencies, as officers may prioritize political interests over their duty to uphold the law and ensure public safety.

Inherent Authority: "Inherent authority" refers to the natural or inherent power and influence that law enforcement and correctional officials possess due to their roles in upholding the law and maintaining order. This authority enables them to carry out duties such as searching, detaining, and using force when necessary, thereby giving them an advantage or dominance over individuals under their supervision⁷⁸.

Lack of Access to Justice: Limited access to legal representation and recourse leaves detainees vulnerable to abuse. Without adequate legal representation, detainees may struggle to assert their

⁷⁶ See Annexure 5.

⁷⁷ Kashyap, Shubham. "Major Problems of Prison System in India." Times of India Blog, 1 Jan. 2022, timesofindia.indiatimes.com/readersblog/shubham-kashyap/major-problems-of-prison-system-in-india-40079/.

⁷⁸ Supra Note 12.

rights or challenge instances of mistreatment. Similarly, barriers to accessing recourse, such as bureaucratic hurdles or fear of retaliation, can deter individuals from seeking justice for violations they have experienced⁷⁹.

Inherent Bias of Police officers: Prejudice, bias, and unchecked authority among law enforcement officers may lead to discriminatory treatment and disproportionate use of force. When officers harbour biases based on race, ethnicity, gender, or other factors, it can influence their interactions with detainees and contribute to differential treatment. Additionally, unchecked authority may embolden officers to use excessive force without facing consequences for their actions. A culture of impunity may embolden individuals in positions of power to engage in abusive behavior without fear of consequences⁸⁰. Police have stigmatization on Muslims and certain lower caste communities and they believe that they normally commit wrongs. The India Justice Report of 2019 shows the inherent bias of police officers⁸¹.

Stigmatization of certain groups in the society: Stigmatization of individuals in custody, particularly marginalized groups, may contribute to dehumanization and justify acts of violence. When detainees are stigmatized or dehumanized based on their social identity, it can lead to the normalization of violence against them. LGBTQ+ people and other marginalized groups may be more susceptible to this kind of stigmatization and its effects⁸².

Inadequate Training: Inadequate training can leave law enforcement personnel ill-equipped to handle high-stress situations with composure and restraint. Moreover, the police officials are not taught enough about Human Rights and this in turn leads to custodial violence. The India Justice Report 2019 shows the minimal amount budget allocation for police training. The highest budget allocation is in Delhi which is just 2.5% of the total budget allocated for police department⁸³.

Political Pressure: Political pressure on law enforcement exacerbates the risk of custodial violence by incentivizing shortcuts and coercive tactics to secure results. The influence of political interests compromises the impartiality of police personnel, prioritizing political objectives over

⁷⁹ K, Rajashree, and Chetan Singai. "Reforms in Legal Aid and Awareness with Regard to the Aged in India: A Case for an Inclusive Approach." *Jindal Global Law Review*, 29 Nov. 2022, <https://doi.org/10.1007/s41020-022-00178-5>.

⁸⁰ Dehal, Aditi. An Analysis of Racial Profiling Vis-à-vis Police Bias. *Jus Corpus Law Journal*.

⁸¹ See Annexure 6.

⁸² Amnesty International, India: Persecution of Minorities and Shrinking Space for Dissent.

⁸³ See Annexure 7.

due process and detainees' rights. The Second Administrative Reforms Commission (2007) highlighted instances where the political administration has exerted undue influence over police personnel, compromising their ability to perform their duties impartially. According to India Justice Report 2019, which investigated on the reasons for of investigation many agreed that political pressure is one of the major hindrance in investigation⁸⁴.

Overburdened Police Officials: The strain on police officers due to overburdened responsibilities contributes significantly to the risk of custodial violence. With only 158 officers per 100,000 people, the lack of manpower leads to fatigue, stress, and rushed decision-making. Reforming working conditions, increasing staffing levels, and providing support and training can alleviate this strain and reduce the risk of custodial violence, fostering a more just and accountable criminal justice system. India Justice Report highlights excessive working hours and minimal holidays for police officials⁸⁵.

Lack of Accountability: In India, numerous complaints are lodged against the police, alleging wrongful arrests, unauthorized searches, instances of torture, and even cases of rape perpetrated while individuals are in custody. To mitigate such abuses of power, robust safeguards must be instituted, including mechanisms ensuring police accountability to political authorities, internal oversight by senior officers, and the establishment of independent bodies tasked with monitoring police conduct⁸⁶.

Existence of Macho culture among police officers⁸⁷: Police officers often face peer pressure to adopt a tough stance, viewing torture as a means to achieve effective policing. This pressure arises from a culture where brutality is normalized, and torture is seen as a necessary tool in law enforcement. Witnessing colleagues engage in acts of brutality can desensitize officers over time, further perpetuating a cycle of violence and impunity within the police force.

Normalization of Police Brutality⁸⁸: Police brutality is often normalized within both the police force and society at large. Factors contributing to this normalization include a culture of impunity

⁸⁴ See Annexure 8.

⁸⁵ See Annexure 9.

⁸⁶ Supra Note 71.

⁸⁷ Asthana, N.C. "Why Police Brutality and Torture Are Endemic in India." *The Wire*, 13 Dec. 2021, thewire.in/government/why-police-brutality-and-torture-are-endemic-in-india.

⁸⁸ Tiwary, Anurag. "The Unlawfulness of Police Brutality in India – the Leaflet." *Theleaflet.in*, 26 Oct. 2021, theleaflet.in/the-unlawfulness-of-police-brutality-in-india/.

among officers, a lack of accountability mechanisms, and societal attitudes prioritizing security over individual rights. Sensationalized media coverage of crime further perpetuates the perception that aggressive policing is necessary for public safety.

These are some of the reasons for custodial Violence in India. Addressing the multifaceted issues contributing to custodial violence demands a holistic approach. We can endeavour to establish a criminal justice system that preserves justice, equity, and human rights for everybody by resolving systemic flaws, guaranteeing accountability, offering sufficient resources and training, and placing a high priority on the welfare of both detainees and law enforcement officers.

2.4. Historical Overview of Custodial Violence in India:

The history of custodial violence in India is intertwined with the evolution of policing systems prevalent in the region⁸⁹. Before the establishment of formal modern law enforcement, the Indian subcontinent relied on local structures and community-driven methods to maintain law and order⁹⁰.

The genesis of law enforcement can be traced back to the early stages of human history when small, nomadic communities sought protection from animal attacks and individuals with malicious intent⁹¹. As these communities evolved into tribes and settled in small villages, they began to establish laws and norms for the protection of people and property. Concurrently, the organization responsible for upholding these tribal regulations emerged, possibly marking the inception of the first law enforcement organization in the form of a military police⁹². Throughout history, there have been police-like figures in nearly every society. India also had such system.

From 500 B.C. to 400 B.C., historical accounts indicate that torture was a prevalent method used by law enforcement to punish offenders and convicts. During this period, methods such as single combat, fire ordeals, and water ordeals were commonly employed⁹³. References to torture and brutality in detention can be traced back to the Vedic era (2000-1400 B.C.). Throughout the legal and philosophical era (800–320 B.C.), torture took various forms⁹⁴. The practice of force,

⁸⁹ Abimanyu, Gokul. "Custodial Violence in India – A Case Study." Law Insider India, 9 July 2020

⁹⁰ Anupam Sharma, Police in Ancient India, Vol. 65, No. 1, The Indian Journal of Political Science, Jan.-March, 2004, pp. 101-110.

⁹¹ B.N. Mullick, A Philosophy for the Police (1969) pp.1-5.

⁹² John L. Sullivan, Introduction to Police Science (1966) p.123.

⁹³ Tripathi, Surendra. "History of Custodial Violence." Scribd.

⁹⁴ Sanker Sen, Police in Democratic Societies (2000) p.48.

compulsion, and torture persisted into the second century AD, is documented in the 1865 Madras Torture Commissions Report⁹⁵.

Dharma and danda were foundational concepts in Indian governance throughout history. "Dandniti," or the use of punishment, was considered an essential component of statecraft. The proper application of "danda" was viewed as a critical duty of the king according to the Dharma Sutras⁹⁶. Among his contemporaries, Manu is the foremost author of Dharamshastra. He discusses four types of punishment: bandhadanda (physical punishment, including the death penalty), vakdanda (admonition), dhikdanda (censure), and Dhanadanda (pecuniary punishment, such as fines)⁹⁷. Bandha danda encompassed beatings, limb amputations, body piercings, the death penalty, and immersion in boiling oil⁹⁸. In ancient India, the punishment was determined by three factors: the caste system, trial by danda (rod), and the ordeal⁹⁹.

Since the Vedic era (2000–1400 B.C.), torture and brutality have been associated with law enforcement in India¹⁰⁰. The study of the Vedas reveals references to officials who appear to have been police officers in ancient India. These officials are designated Jivagribhs in the Rig Ved and Ugras in the Upanishads¹⁰¹. The Rigveda specifically mentions robbers (taskars) and thieves (taya or sutayas) being dealt with by the king's envoy with cruel and unusual punishment¹⁰². During this period, punishment was viewed as a form of atonement that purified the individual of wicked tendencies and transformed their nature. Justice was administered through extremely painful trials, including those involving fire, water, poison, and single combat¹⁰³. These rituals and ordeals seemed almost magical, designed to compel the parties involved to confess the truth through intimidation.

⁹⁵ Anuj Bhuwania, *Very Wicked Children: 'Indian Torture' And The Madras Torture Commission Report of 1855*, 06 IJHR 09, 10 (2009).

⁹⁶ The First Report of National Police Commission, 1979.

⁹⁷ Graves Champney Houghton & Standish Grove Grady, *Institutes of Hindu Law, Or, The Ordinances of Menu, according to The Gloss of Culluca: Comprising The Indian System of Duties, Religious and Civil* London: Wm. H. Allen, 164 (1869)

⁹⁸ Qadeer Alam, *Historical Overview of Torture and Inhuman Punishments in Indian Sub-Continent* 31(2), JPUHS 127, 128 (2018).

⁹⁹ Arthur Llewellyn Basham, *The Wonder That Was India: A Survey of the History and Culture of the Indian Sub-Continent Before the Coming of the Muslims* 122 New York Taplinger Publishing Company 1968.

¹⁰⁰ S.K. Ghosh, *Torture and Rape in Police Custody* P.15 (1993).

¹⁰¹ Suman, Saurav. *The Police Brutality in India: A Critical Analysis*. Sept. 2020.

¹⁰² GIRIRAJ SHAH, *INDIAN POLICE - A RETROSPECTS* P.9 (1992).

¹⁰³ P.V. KANE, *HISTORY OF DHARAMSASTRAS* PP.368-78(Vol. IIIrd, 1973).

During the epic era (1400–800 B.C.), it is evident that the police subjected detainees to torture¹⁰⁴. This phase was succeeded by the legal and philosophical periods, during which torture and harsh punishment remained very common¹⁰⁵. Indications suggest the presence of an indirect policing system between 600–300 B.C.¹⁰⁶, as evidenced by texts such as the Yagnavalkyasmriti (c. 100–300 A.D.), the Naradasmriti (c. 100–400 A.D.), and the Katayanasmruti (c. 400–600 A.D.)¹⁰⁷. However, these systems often perpetrated violent crimes against those apprehended under the guise of law enforcement.

Between 320 B.C. and 300 A.D., the Buddhist era exemplified strong humanitarian principles, prohibiting any form of torture during incarceration. Moreover, inmates who were elderly, female, or had large families were granted preferential treatment, reflecting a compassionate approach to custodial matters¹⁰⁸. In the subsequent Gupta era (320–500 A.D.), four types of ordeals were utilized to punish prisoners when evidence against them could not be satisfactorily proven by available means. Thus, ordeal-based trials were prevalent during this period, representing a significant aspect of the judicial system¹⁰⁹.

Not much is known about the criminal justice system during the six and a half centuries following the death of Harsha in 650 A.D. This period was characterized by dynasty warfare, with numerous small Hindu kingdoms engaged in perpetual conflict, resulting in constantly shifting borders and political landscapes¹¹⁰. As a result, detailed records regarding the criminal justice system from this era are scarce, and the focus was primarily on the military and political aspects of governance.

During Muslim rule from the 13th to the 18th century, offenses were subject to Shariat law, adhering to Islamic principles of justice and equity¹¹¹. However, severe penalties were imposed, particularly in cases of robbery and murder. Criminals often faced execution by being trampled under elephants' feet, a traditional method carried out publicly as a deterrent¹¹². Living conditions

¹⁰⁴ S.K. GHOSH, THE OUTCRY OF POLICE BRUTALITY P.34 (1983).

¹⁰⁵ VENU GOPAL.RAO, FACETS OF CRIME IN INDIA P. 222 (1963).

¹⁰⁶ SURENDERNATH SEN, ADMINISTRATIVE SYSTEM OF MARATHAS (1925) p.511.

¹⁰⁷ Id.

¹⁰⁸ Supra Note 9.

¹⁰⁹ VENU GOPAL.RAO, FACETS OF CRIME IN INDIA P. 222 (1963).

¹¹⁰ Supra Note 97.

¹¹¹ ANIL CHANDRA BANERJEE, A NEW HISTORY OF MEDIEVAL INDIA 393 (S. Chand, New Delhi 1986).

¹¹² Home Office, Report of Royal Commission on Capital Punishment 703 Her Majesty's Stationary Office, London (1949-53).

for convicts were harsh, with practices like mutilation and "eye for an eye" punishments being prevalent. Adulterers were stoned to death, and thieves had their hands severed, with no alternative compensation allowed for victims or their families¹¹³. Torture, notably in prisons, was widespread¹¹⁴, and often used to extract confessions. The monarch retained ultimate authority over the administration of justice¹¹⁵.

Emperor Akbar, motivated by a vision of impartial justice, pursued policies of tolerance and equality¹¹⁶. He sought to reform harsh treatment of prisoners. His successor, Jahangir, continued these principles but occasionally resorted to severe punishments for serious offenses¹¹⁷. Jahangir specifically prohibited the mutilation of ears and noses but did not outlaw other forms of amputation. Jahangir occasionally used severe methods, such as execution by elephants or wild beasts, to punish individuals convicted of serious social or political offenses¹¹⁸.

Shahjahan's reign was marked by his infamous captivity of his own son, reflecting a period where prisoners faced difficulties in obtaining leniency. Aurangzeb, who succeeded Shahjahan, aimed for more orderly justice, instructing officials to detain individuals only for valid reasons. His measures, including swift trials and release of innocents, aimed to reduce violence against inmates¹¹⁹.

Following the decline of the Mughal Empire, British colonial rule in India aimed to improve the legal system, drawing inspiration from English law. However, despite these intentions, harsh and brutal methods of punishment persisted. Instances of severe treatment, especially by the police, were not uncommon. Coercion became a cornerstone of British administration strategy in India¹²⁰.

The criminal justice system was absent in India from the fall of the Mughal Empire until the arrival of British administration. During their earlier days in India, the British encountered bands of

¹¹³ Supra Note 97.

¹¹⁴ Manu, Ch. VII, SI.1-13; also see Upendra Nath Ghoshal, *A History of Indian Political Ideas: The Ancient Period and The Period of Transition to The Middle Ages* 43 (Oxford University Press, Oxford 1959).

¹¹⁵ Arif Majruddin & Pooja Singh, *Custodial Violence in India with Reference to The Prevention of Torture Bill and International Legal Framework*, Volume 8, Issue 1, IJLS, 2022.

¹¹⁶ S.N. DHYANI, *MORALITY AND JUSTICE* P.92 (1984).

¹¹⁷ MADAN, T.C., *INDIAN POLICE, ITS DEVELOPMENT UPTO 1905 AND HISTORICAL ANALYSIS* P.11 (1980).

¹¹⁸ Justice Gulab Gupta, *Custodial Violence and Human Rights Commission* P.286 *Central Indian Law Quarterly*, Vol. 12, (July-Sept. 1999).

¹¹⁹ Supra Note 9.

¹²⁰ Ibid.

professional robbers and killers known as "thugs," who operated in isolated areas. The Britishers came up with the Criminal Tribes Act of 1871 where several tribes were classed as hereditary, habitual offenders who were prone to committing minor offenses and they were under constant surveillance¹²¹. Under this act, many people, even before trial, residents were arbitrarily detained on false charges, leading to imprisonment and deaths. Officials, especially Kotwals, commonly tortured individuals, often resulting in fatalities. The British established courts, police forces, and jails, codified laws, and abolished administration of justice social traditions, bringing order and dismantling the thugs¹²².

In addition, if an individual couldn't pay their full debt, revenue collectors resorted to torture. In 1854, allegations against the East India Company were raised in the House of Commons¹²³. Subsequently, the Madras government initiated a thorough investigation by appointing a three-person commission to probe the matter. Over seven months, the commission heard numerous cases related to the allegations¹²⁴. The resulting Torture Commission report of 1855, commissioned by the British government, shed light on the prevalence of police torture in the Madras presidency. It underscored that torture was not an isolated incident but rather a systemic issue within policing. Consequently, the recommendations of the Torture Commission led to the establishment of the Police Commission in 1860¹²⁵. Furthermore, it advocated for the formation of a unified civil police force under the proposed Police Act of 1861. The 1905 report from the Police Commission, appointed by Lord Curzon, highlighted instances where innocent individuals were intimidated, threatened, or coerced into providing information¹²⁶.

Following forty years of the Police Act of 1861 being in effect, the Indian Police Commission (1902-03) conducted a comprehensive assessment of the police's performance. The commission found the police force to be highly inefficient, corrupt, and oppressive. It identified organizational and training deficiencies, inadequate supervision, and a failure to earn the trust and cooperation of

¹²¹ Kapadia, K. M. "The Criminal Tribes of India." *Sociological Bulletin*, vol. 1, no. 2, 1952, pp. 99–125. JSTOR, <http://www.jstor.org/stable/42864482>. Accessed 14 Apr. 2024.

¹²² *Supra* Note 97.

¹²³ Speech of Danby Semour, at Hansard, 3rd ser., 135 (July 11, 1854), (1854) 61.

¹²⁴ A Letter issued from the Chief Secretary, H. C. Montgomery, Public Department, Fort St. George, 925 (Sept. 9, 1854).

¹²⁵ The Police Commission Report, (Sept. 01, 1860).

¹²⁶ East India Police, Report of The Indian Police Commission and Resolution of the Government of India 16 Printed for His Majesty's Stationary Office, London (1905).

the public. The commission deemed the state of the police across the nation as deplorable, with widespread abuses causing significant harm to the public and tarnishing the government's reputation. Urgent and substantial changes were deemed necessary. The commission recommended recruiting educated Indians into higher positions within the police force, separating law and order functions from investigative tasks, and establishing a cadre for sub-inspectors of police at police stations and state criminal investigation departments. However, in the ensuing decades, the colonial government increasingly resorted to coercive measures instead of addressing grievances, as evidenced by the rise of movements such as the Swadeshi Movement, Non-cooperation Movement, Civil Disobedience Movement, and Quit India Movement, as well as labor unrest, the emergence of the Kisan movement supported by the Communist Party, and rural insurrections¹²⁷.

The agents of a foreign government were responsible for committing crimes and immoral acts. They established their own courts, police, jails, and laws to assert dominance over the nation for personal gain and convenience. The current police system is a legacy of British rule. This mindset likely persists among Indians in general and police personnel in particular¹²⁸.

In the post-independence era, several Police Commissions were established by both the Union and State Governments to assess the functioning and effectiveness of the State Police. These commissions operated during the 1950s, 1960s, early 1970s, and 1980s. Many of these investigative bodies documented cases of third-degree torture carried out by the police while individuals were in custody for political reasons. Additionally, they highlighted instances of corruption and identified shortcomings in infrastructure support and training within the police force.

The recommendations put forth by these commissions primarily focused on administrative restructuring, the size of the police force across different units, the relationship between the police and the Principal District Collector, remuneration and benefits for police ranks, recruitment criteria for new officers, establishment of training facilities, and other pertinent issues.

¹²⁷ Kamlesh Kumar, *Custodial Crimes in Police Custody: Causes, Consequences and Preventive Measures*, Tata Institute of Social Sciences (2011) p.39.

¹²⁸ *Supra* Note 97.

The Shah Commission, convened in 1978, specifically examined instances of police violence occurring between 1975 and 1977. It brought to light the actions of the police during the state of emergency when they operated without being accountable to any public authority. The Commission urged the government to take necessary measures to prevent improper political and administrative interference in law enforcement activities¹²⁹.

In conclusion, the historical overview of custodial violence in India reveals a complex and enduring challenge that spans centuries. From ancient civilizations to colonial rule and into the post-independence era, the issue has persisted, reflecting systemic failures within the criminal justice system. As we confront this legacy, it is imperative to acknowledge the profound impact of custodial violence on individuals and society at large. As we move forward, coordinated efforts are required to address the underlying issues, implement significant reforms, and preserve the values of justice, accountability, and human rights. By doing this, we can aim to create a future in which all people are treated with respect and dignity under the law and where custodial violence is completely eliminated.

2.5. Custodial Violence against vulnerable sections of society:

Most of the times it is the disadvantaged section of society that is affected by the custodial violence. People belonging to the lower caste are mostly subjected to custodial violence¹³⁰. Gender further complicates the narrative of custodial abuse, as evidenced by the distinct forms of violence experienced by women, transgender individuals¹³¹. Socioeconomic factors exacerbate custodial violence, with caste and gender playing interconnected roles, amplifying the vulnerability of marginalized populations. Systemic neglect and economic disparity leave certain communities particularly susceptible to abuse and exploitation within the custodial system.

Thus men from underprivileged sections of society such as those belonging to lower class, religious minority, and marginalized castes in India are victims of torture and brutality during detention. Arrested and detained on unproven charges, the State uses violence against its own people. When looking into the circumstances and causes of the victims' initial imprisonment, the

¹²⁹ Ibid.

¹³⁰ "Impunity and Complicity: The Role of the State and Non-State Institutions in Cases of Custodial Deaths in India the Polis Project." Thepolisproject.com.

¹³¹ Varsha Purohit, Custodial Rights of Women in India, Volume 2, Issue 3, IJLJS.

idea of identitarian violence is crucial. Thus it important to comprehend the systemic and fundamental prejudices held by the Indian government towards individuals belonging to marginalized populations and minority communities.

2.5.1. Custodial Violence and Caste:

Custodial Violence is committed in an increased scale against the underprivileged-section of society, especially against the Dalits, SCs and STs. There are Sociological aspects that contributes to the increased violence against these socially marginalized people. Some of these aspects are:

Custodial violence against the SC/ST community often stems from deep-rooted caste discrimination prevalent in India¹³². The caste system perpetuates a hierarchical structure where SC/ST communities are marginalized and subjected to structural violence¹³³. This violence is not fueled by personal animosity but by the entrenched belief of superiority among upper castes. Any attempt to challenge this social order triggers tension and conflict, as higher castes perceive it as a threat to their status quo. Consequently, they institutionalize efforts to exclude lower castes from societal spheres, leading to their socio-economic marginalization¹³⁴. Despite historical ignorance of their rights, educational expansion and reservation policies have heightened political awareness among marginalized communities, empowering them to challenge systemic discrimination.

Caste ethnocentrism is another factor that may contribute to an increase in incidents of custodial violence against the SC/ST population in India. Believing that one's own ethnic or cultural group is more significant than any other group in relation to oneself is known as ethnocentrism. Dalits and other minorities are frequently socially excluded due to caste-based ethnocentrism¹³⁵.

75 people, or 60% of the 125 people who died in the 124 occurrences of police-related deaths that NCAT recorded in 2019 were from underprivileged and marginalized communities. Thirteen victims came from Dalit and tribal communities, fifteen from the Muslim minority community, and thirty-seven were arrested for minor offenses like theft, burglary, deception, illegal liquor sales, gambling, etc., which shows their socioeconomic status. Three of the victims were farmers,

¹³² R, Ameena. A Socio-Legal Study of Custodial Violence with Special Reference to SCs/STs in India. 2021.

¹³³ Satish Deshpande, The Contemporary Meaning of Caste, *livemint* (www.livemint.com/caste).

¹³⁴ Mahmudul Hasan Laskar (2018), 'Ethnocentrism and Social Exclusion of Weaker Section in India', 4 (5), *International Journal of Humanities and Social Science Research*.

¹³⁵ *Id.*

one was a laborer, one was a refugee, two were security guards, one was a rag-picker, and two were drivers.

Thus caste inequality, rooted in historical and cultural contexts, plays a significant role. Social biases, religious prejudices, and economic disparities further compound the vulnerability of lower caste individuals. The influence of political motivations, ethnocentrism, and instances of police deviance contribute to the manifestation of custodial violence within this context¹³⁶.

2.5.2. Women and Custodial Violence:

A disturbing reality that disproportionately impacts women in the criminal justice system is custodial abuse. Historically, women have been suffering because of custodial violence. One of the form of custodial violence that is committed against women is custodial rape¹³⁷. The Mathura rape case¹³⁸, is one of the well-known case in this regard. In that a 16-year old girl was raped in the police custody. The Supreme Court ruled that since the girl did not express her non-consent, it did not amount to rape. This created an amendment in the criminal Law and shifted the burden of proof from accuser to the accused. Another case in this regard is the Arati Maji case of 2014¹³⁹. The victim's father claimed that his daughter, who was being held as a suspect in a sedition case, had been raped while in the police's custody in a nearby camp. The police had apprehended the daughter at 4 a.m. In accordance with CrPC section 176 (1-A), the petition was filed. Nevertheless, the victim was not medically examined, and since six months had passed by the time the case was taken up, it became pointless to do so at that point. As a result, the victim was found not guilty. The case was found in favor of the defendants due to insufficient evidence.

Victims of custodial violence, especially custodial rape, face significant hurdles in seeking justice. Proving such cases in court is challenging due to the authority entrusted to police personnel and the difficulty in obtaining evidence while in custody. Victims often struggle to file formal

¹³⁶ Mahmudul Hasan Laskar (2018), 'Ethnocentrism and Social Exclusion of Weaker Section in India', 4 (5), International Journal of Humanities and Social Science Research.

¹³⁷ R.S. Saini, Custodial Torture in Law and Practice with Reference to India, Vol.36, Journal of the Indian Law Institute, 166-192 (1994).

¹³⁸ Tuka Ram and Anr vs State of Maharashtra, (1979) SCR (1) 810.

¹³⁹ Arati Majhi vs State of Odisha, LNIND (2014) ORI 156.

complaints, and evidence may be tampered with or destroyed by officials. Additionally, victims bear the burden of proving lack of consent, further complicating legal proceedings¹⁴⁰.

Thus, custodial violence against vulnerable sections of society, particularly those belonging to lower castes and women, underscores deep-rooted systemic issues within the criminal justice system. Comprehensive changes are needed to combat custodial violence, including tearing down systemic injustices, opposing discriminatory beliefs, and making it a top priority to defend everyone's human rights, regardless of social or economic status.

2.6. Conclusion:

In this chapter, we have explored the multifaceted concept of custodial violence, delving into its various types, underlying reasons, and historical context. Thus we can observe that the Custodial violence, manifests itself from two distinct perspectives. The first entails active participation by the police, whether as an organized force or as individual officers, in perpetrating violence against detainees. Equally significant yet often overlooked is the second form of police brutality, where officers passively observe the violence without intervening, thereby complicity facilitating the abuse.

Throughout our examination, we have consistently highlighted the paramount importance of understanding custodial violence within the broader framework of the criminal justice system. Justice, human rights, and due process are fundamental values that are seriously threatened by this problem. Ranging from subtle coercion to overt brutality, custodial violence has cast a long and dark shadow over the history of law enforcement in India. There are many reasons for custodial violence and systematic changes should be made in order to prevent custodial violence.

We also observed that Custodial Violence and Torture has been in existence for a very long period of time in India and how today the disadvantaged section of society are affected by it. Ultimately, our examination of custodial violence serves as a reminder of the persistent problem in our legal institutions. It is only through unwavering acknowledgment, profound introspection, and decisive, meaningful action that we can earnestly embark on the journey to dismantle these deeply entrenched patterns of abuse and uphold the sanctity of justice for all.

¹⁴⁰ Id.