

CUSTODIAL VIOLENCE - AN ANALYSIS ON THE RISING ACT OF CRUELTY

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ABSTRACT

The incidents of custodial deaths are at an increasing pace in recent times. It is a human right abuse shaking the fundamental rights of a citizen. This is basically due to the thought of supremacy prevailing among the personnel of the concerned department. A shocking fact is that nearly 1731 custodial deaths were recorded in the year 2019. One of those cases is the custodial death of a father and son in Tuticorin, Tamil Nadu. The duo was allegedly arrested for keeping their shops open after the allowed timings during the lockdown. A few days later they were announced dead. The injuries on their bodies kindled talks on the police brutality which led to a detailed investigation ordered by the Madras High Court Madurai bench. This is one of the countless cases related to the custodial violations. There are certain safeguards provided in the constitution related to the custodial violence. Article 20 of the Indian Constitution protects a person from the brutality of the police to confess to a crime that he has not committed and Article 21 is against torture and assault. There are other statutory safeguards as well like Indian Evidence act 1872, Code of criminal procedure 1973, which paves way for the dismissal or suspension of the police personnel indulging in the activities of custodial violence. Sections 330,331,342 of the IPC provides to deter an officer who has used third-degree methods causing torture. Law commission of India's 273rd report recommends the criminal prosecution of the police personnel accused of committing custodial torture. Strict

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implementation of the concerned laws should be made facilitating stringent actions against the cold-blooded play of power.

Keywords: Human right abuse, custodial violence, criminal prosecution, Indian Penal Code

INTRODUCTION

Custodial deaths are a cruel injustice which shakes the very foundation of human rights. Even though the courts and Human Rights commission are against and trying to prevent it seems never ending crime. National Campaign Against Torture reported that 1,731 persons died in custody in the year 2019 and on an average 5 deaths every day of the year.

Sir James Fitzjames Stephen defines custodial violence as -

“Custodial violence is a colonial legacy. There is a great deal of laziness in it. It is far pleasant to sit comfortably in the shade rubbing red pepper into a devil’s eyes than to go about in the sun hunting up for evidence”³

THE MISUSE OF POWER

The police department who are in a position to protect the rights of the people is the one who is indulged in these crimes “As fence grazed the crop”. The concept of violence on criminals to prevent them from attacking the innocent public has changed its way and now has become an alleged crime and misuse of authority. Even though there are various reasons for custodial deaths like lack of hygiene, mental and health condition, the brutality of police is the cause in most of the incidents.⁴ The main reason for this crime is that the victims undergoing custodial torture are in a position where they can’t voice out and protest against this. Even if an act of custodial violence comes into the light and ordered for an investigation the police

³ JAMES FITZJAMES STEPHEN, A HISTORY OF THE CRIMINAL LAW OF ENGLAND (Routledge/Thoemmes) (1996).

⁴ CUSTODIAL VIOLENCE IN INDIA CUSTODIAL VIOLENCE IN INDIA,
<http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html> (last visited Jun 25, 2022).

personnel misuse their power and manipulate the evidences against them. No direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock- up where generally torture or injury is caused is away from public and obviously the witnesses are either policemen or co-prisoners. The co-prisoners are highly reluctant to appear as witness as they fear of adverse reaction by the superior officers of the police and the other officials never forward as a witness due to the fear of their higher officials or due to the sense of brotherhood. The worst violations of human rights take place during the course of investigation when the police, with a view to securing evidence or confessions, often resort to third-degree methods. In the current trend of custodial violence being used to extract information or confessions there have been several number of torture methods used by the police which are against the human rights.⁵

PRE-INDEPENDENCE PERIOD

This is not a problem which is faced only in recent times but from the pre independent India as well. The Britishers themselves sowed the seeds by granting special rights to the police department to develop a sense of fear amongst the general public so that they did not threaten them to continue their rule, exploitation and realization of maximum revenue from the country which later paved way to the custodial violence. During the early British period the police were so anti-people and showed brutality towards people. Many innocents were tortured in order to confess the crime which they had not done. A separate commission called the Torture commission 1855 was formed which suggested major reforms for the police department. The report drew the attention to the fact that torture is a structural problem of policing rather than

⁵ CUSTODIAL VIOLENCE IN INDIA CUSTODIAL VIOLENCE IN INDIA,
<http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html> (last visited Jun 25, 2022).

of aberrant and extraordinary instances.⁶ It also laid the foundation for the Torture Commission laid foundation to set up Police Commission, 1860 which recommended the abolition of the military police as a separate organization and suggested for the constitution of a single homogenous force of civil constabulary under the proposed Police Act, 1861.⁷

POST- INDEPENDENCE PERIOD

Several commissions were appointed in the 1950s, 1960s, the early 1970s and 1980s. Few of them are the The National Police Commission(1979-80) examined in detail the issues pertaining to police functioning inter alias in its eight reports, Rebeiro Committee (1998) which examined the relevance of valuable recommendations of the National Police Commission in changing environment of the country, Padhmanabhaiah committee on police reforms (2000).⁸

IMPORTANT COMMISSIONS

1) The National Police Commission (1979-80):

It was the first commission formed after the independence which suggested various reforms and produced eight reports. This commission provided- appointment of the criminal justice commission, guidelines for avoidance of vexations arrests, guidelines regarding use of handcuffs, The examination of witnesses should be conducted near the place of offence or at the home of the witness, various supervisions to prevent the act of violence, Properly developed psychologically tests should be done during the selection of the personnel, All police activities, to the extent possible, should be open, police Commissionerate system for major cities,

⁶ Anupama Rao, *Problems of violence, states of terror: Torture in Colonial India*, 36 ECONOMIC AND POLITICAL WEEKLY , 4125–4133 (2001).

⁷ HISTORICAL PERSPECTIVE OF CUSTODIAL TORTURES IN INDIA JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH, <https://www.jetir.org/papers/JETIR2108475.pdf> (last visited Jun 29, 2022).

⁸ HISTORICAL PERSPECTIVE OF CUSTODIAL TORTURES IN INDIA JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH, <https://www.jetir.org/papers/JETIR2108475.pdf> (last visited Jun 29, 2022).

separation of investigating staff from law and order staff, Establishments of a central police committee.⁹

2) *Padhmanabhaiah Committee on Police Reforms (2000):*

The Committee observed that every Commission and Committee in the past has repeatedly stressed the need for better utilization of scientific aid in investigation and for reduction of custodial violence. The Committee recommended that every police station should be equipped with investigation kits and every sub-division should have a mobile forensic science kits.¹⁰

3) *Malimath Committee on Reforms of The Criminal Justice System (2003):*

The Malimath Committee highlighted various issues associated to the criminal justice system in general and police system in particular.¹¹ The Committee has examined the fundamental principles of the functioning of the Criminal Justice System such as right to silence, rights of the accused, presumption of innocence and burden of proof, justice to the victims of crimes etc. in detail. The Committee recommended that audio and video recording of statements of witnesses, dying declarations and confessions should be authorized by law.

LANDMARK CASES AND JUDGMENTS

1) *State of U.P V. Ram Sagar Yadav:*

⁹ Raju,S. Bala Krishnam, SOME SELECTED RECOMMENDATIONS OF THE NATIONAL POLICE COMMISSION

¹⁰ SUMMARY OF RECOMMENDATIONS MADE BY THE PADMANABHAIAH COMMITTEE ON POLICE REFORMS, https://www.humanrightsinitiative.org/programs/aj/police/india/initiatives/summary_padmanabhaiah.pdf (last visited Jun 30, 2022).

¹¹ THE MALIMATH COMMITTEE'S RECOMMENDATIONS ON REFORMS IN THE CRIMINAL JUSTICE SYSTEM IN 20 POINTS THE HINDU, <https://www.thehindu.com/news/national/the-malimath-committees-recommendations-on-reforms-in-the-criminal-justice-system-in-20-points/article61493071.ece> (last visited Jul 1, 2022).

This case played a major role in paving way for major changes in the procedures. This case deals with the false accusation of a farmer for cattle trespass by his neighbor where the officer demanded bribes. The police officer in charge of the enquiry arrested the farmer and tortured him severely, within 6 hours of the registering of the initial case the farmer then succumbed to his injuries and died.¹² The Law Commission Report of 1985 cited the Apex Court's verdict in this case and suggested changes to the Indian Evidence Act, 1872 pertaining to section 114 of the act.

2) *J. Prabhavathiamma v/s The State of Kerala & Others:*

Two serving police personnel were awarded the death sentence by a CBI court, after hearing the case for over a decade, in Thiruvananthapuram, over the death of a scrap metal shop worker, who the court believes was murdered in custody. The Justice said that "This is a brutal and dastardly murder by accused (number) one and two... The acts of the accused persons would definitely adversely affect the very institution of the police department... If the faith of the people in the institution is lost, that will affect the public order and law and order, and it is a dangerous situation."¹³

3) *Joginder Kumar v. State of U.P and Others:*

In this case an advocate was detained in the police station for inquiry. He was detained without the concerned magistrate. When inquired by his brother it was found that the advocate was taken to an undisclosed place. But the police claimed that the advocate was released. Hon'ble Court issued the following guidelines in regard with this case: The police officer shall

¹² State of U.P vs Ram Sagar Yadav AIR 416, 1985 SCR (2) 621.

¹³ J. Prabhavathiamma v/s The State of Kerala & others AIR 1998 S.C. 2001.

inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly. It was further directed that, it shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.¹⁴

TUTICORIN CUSTODIAL DEATH OF FATHER, SON

This incident shook the entire country. This case greatly highlighted the act of custodial violence which received opposition from the people. This case caught everyone's attention. Often the cases of custodial deaths are not brought into light and most of them are hidden and not known by the common people. It is this case that brought into light the extremity of the custodial violence which reached even the common people. The father and son duo P. Jeyaraj (58), and his son Bennix (38) were arrested for keeping their shop open beyond the allowed time in the lockdown rules. His son Bennix followed them to the police station where he saw his father allegedly beaten up by the officers. When Bennix questioned the officers about this brutality that provoked the officers and they started harassing both the father and son. And they were released the next morning and taken to the hospital where they succumbed to their injuries and died. The Madurai Bench of The High Court of Madras took the initiative and ordered for the magistrate investigation and subsequently five police officers were arrested and then a detailed investigation by the CBI is on progress.

COMMON CAUSES OBSERVED

¹⁴ Joginder Kumar v. State of U.P and Others 1994 AIR 1994 SC 1349

There are various causes observed for the act of custodial violence. Work pressure is one of the causes for the custodial violence. The increasing rate of crimes and great organization and clever movements of the criminal and the less number of police personnel recruited which increases the work pressure. Now days the criminals are so highly facilitated and well trained due to which when they can finally get the criminal arrested or in their hands they lose their temper and control and end up killing them in custody. The greed for money and torturing the convicts in order to get money from their family. They also use third degree methods with the criminals under custody thinking that in future they could fear the sense of doing wrong and will never again repeat the same offence. Absence of proper training also plays a major role in these violences. Inadequate police training often results in the employment of third-degree tactics. The absolutely poor training offered to police officers and the broad disregard for the need of maintaining composure, being courteous and respectful to the people, and avoiding brutality or excessive harshness are the causes of violence. Gore Commission on Police Training in 1972 was of the opinion that one of the goals of training should be to instil the proper attitude towards the public, which consists of never forgetting that the civil servant is the community's servant and not its master. However, sadly, police have not yet received appropriate training with the stated purpose in mind. The police should get adequate training, which should include a separate course that teaches them about human rights and that they are here to safeguard them, not violate them. Many of the time there is hand and support of the political power behind the crime and they don't want their name to be spilled out so they pay the police officer to torture and cause pain to the convict. Since the state has given special powers they consider that they have no limits.¹⁵ In addition to the aforementioned causes,

¹⁵ CUSTODIAL BLOODSHED IN INDIAN JAILS LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-3515-custodial-bloodshed-in-indian-jails.html> (last visited Jul 1, 2022).

sexual weakness, sadism, and other motives may also justify the use of torture in prison. Male police officers may be attracted to prisoners of the opposing gender. To satisfy this passion, he may use force and commit rape while in detention, or he may utilize his official position to get permission for a sexual encounter. The Indian Penal Code of 1860 has been amended to allow for harsh punishment for personnel who use their official position to get the agreement of female prisoners in custody for sexual relations. The third degree is also used for "teaching a lesson" and "vomiting outrage." It is the point at when a police officer's professional ability surrenders to a scenario, and he almost loses his sanity. This may be avoided if the police officer is able to retain their composure, not be overtaken or ripped apart by emotions, maintain philosophical detachment, and, as a corollary condition, have appropriate professional expertise.

Social factors might also be a cause of prisoner violence. We are used to thinking in terms of "an eye for an eye" and "tooth for tooth" in our nation. Therefore, society implicitly endorses and anticipates the use of violence against suspects in order to get the truth. Complainants demand that police employ force or violence to subdue a suspect. Therefore, in a society indifferent to the use of force against other humans, police officers get a kind of societal backing for these criminal activities.

IMPORTANT LEGAL SAFEGUARDS

1) Constitutional Safeguards:

Article 20 of the Indian constitution states that no person shall be convicted of any 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 and no person accused of any offence shall be compelled to be a witness against himself. This article protects a person from self-incrimination.¹⁶

Article 21 of the Indian constitution states that no person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India. This article protects the right to be free from torture.¹⁷

Article 22 states no person who is arrested shall be detained in custody without being informed and the arrested person shall be produced before the nearest magistrate within a period of twenty-four hours.¹⁸ These provisions are designed to ensure that a person is not subjected to any ill-treatment that is devoid of statutory backing or surpasses prescribed excesses.

2) *Code Of Criminal Procedure:*

Section 57 states that a person arrested cannot be detained more than twenty-four hours without warrant. It is also intended to prevent the possible abuse by the police of their powers in trying to make discoveries of crime by means of duress, terror, and wrongful confinement.¹⁹

Section 163 states that no police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise. No police officer or other person shall prevent, by any caution or otherwise, any person from making in the course

¹⁶ ARTICLE 20, THE CONSTITUTION OF INDIA (1949).

¹⁷ ARTICLE 21, THE CONSTITUTION OF INDIA (1949).

¹⁸ ARTICLE 22, THE CONSTITUTION OF INDIA (1949).

¹⁹ SECTION 57, CODE OF CRIMINAL PROCEDURE (1973).

of any investigation under this Chapter any statement which he may be disposed to make of his own free will.²⁰

3) *Indian Penal Code:*

Under section 166 any person in the public authority doing anything against the normal conduct which they should be following and causing harm or noncompliance with the law shall be punishable with imprisonment for the duration of one year or fine or sometimes both, this also cover the pain and hurt illegally on the mentality, property, family, reputation of the person.²¹

Section 342 provides for the punishment for wrongful confinement. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.²²

ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION

This commission helps in detecting the misuse of laws which are against the rights of the individuals guaranteed by the constitution. A person can directly complain under this commission for any torture or hurt undergone after the arrest and this commission have power to investigate the same. It keeps record of the death and violence in the police custody with the help of the forensic scientific means. Scientific techniques and forensic science are used to prevent resorting to physical torture during interrogations. A monitoring system has been made to monitor the use of authority and the separation of the duties in between the police department and the jail departments and regular shuffling of persons in authority so that there could be less

²⁰ SECTION 163, CODE OF CRIMINAL PROCEDURE (1973).

²¹ SECTION 166, THE INDIAN PENAL CODE (1860).

²² SECTION 342, THE INDIAN PENAL CODE (1860).

brutality by the authority. The Commission represents India's commitment to the promotion and defence of human rights. Realizing that torture in detention is one of the most egregious violations of human rights, the Commission gave precise directions to law enforcement agencies regarding the reporting of fatalities in police lockups and correctional facilities shortly after its establishment. It required the district administrators and superintendents to report fatalities in custody within 24 hours of their occurrence. The post-mortem examination must also be documented on video.

The rationale for issuing this command must be investigated. The Commission was troubled by the increasing number of fatalities in police custody and believed that the police were attempting to conceal their use of torture and abuses. There was a concerted effort to conceal the truth. The physicians performing the autopsies were influenced by the police and were not completing thorough evaluations. They complied with police demands. A post-mortem is one of the most essential methods for determining the exact cause of death, yet what was reported was merely the police's interpretation. Instead of shedding light on the cause of death, the post-mortem helped conceal the victim's death as a consequence of mistreatment in custody. Without any independent evidence from outside sources, the case's outcome hinged only on the observations collected and the doctor's conclusion in the postmortem report. In addition, as a precautionary step, the commission modified the autopsy model and the magisterial inquiry procedure. The panel also established a detailed methodology for the reporting of bodily alterations resulting from torture.

There is little question that the proactive participation of the NHRC has exerted some pressure on the police, who constantly dread being detained at any moment. The Commission does not just depend on police records, but also pays great weight to complaints received from the

victim's family. According to a study by Transparency International²³, the commission received more than 16 million complaints of custodial fatalities between 1993 and 2016, of which only approximately 22,000 remain to be processed. In addition, the processes of videography, post-mortem examination, and court investigation have made the process more visible and compelled law enforcement officials to be more cautious.

CONCLUSION

The act of custodial violence is one of the brutal forms of violence. The saddest part of it is that this in human activity is done by the educated and trained personnels of the government department who need to maintain order and discipline in the society. The act of custodial violence has also made bad impressions and the lose of hope on the concerned department as the personnels who are in a position to safeguard the public are the persons behind this cruel activity. Various guidelines should be formed to educate and training the officials. Even though it is not a new problem for the society these acts of violence are at an increasing pace in recent days. Even though there are various laws to prevent this and various committees has given various reports and recommendations this cruelty doesn't seem to decrease, a stricter rule should be implemented to control it. Various preventive measures such as placing CCTV cameras in the interrogation rooms, frequent supervision by the non-official visitors, the personnel who has indulged in these crimes need to be criminally prosecuted. The society is in an urgent need to prevent this increasing cold-blooded play of power.

²³ PROTECTION OF HUMAN RIGHTS IN INDIA, <https://transparencyindia.org/wp-content/uploads/2019/12/Protection-of-Human-R%E2%81%ACights-in-India-as-on-9th-Dec-2019.pdf> (last visited Aug 6, 2022).

In conclusion, custodial violence is the cold-blooded and callous conduct of law enforcement against inmates, those awaiting trial, and detainees. This includes horrible crimes such as physical and sexual abuse, psychological torture, and in extreme circumstances, fabricated encounters. Increasing incidents of custodial violence pose a threat to the values of our welfare state, as articulated in the Constitution, including the protection of life and personal liberty. The graph's upward tendency must be evaluated and analyzed, and remedial steps must be implemented with the participation of all stakeholders.

Some major actions must be done to guarantee police responsibility towards citizens, and rules must be formed to limit their cruel and inhumane working practices. Police Complaint Authorities must be formed in every district and state, with the authority to investigate and punish police officers for unlawful activity and abuses of human rights. Special attention should be paid to the training procedures police officers undergo, and modifications should be made to adapt their treatment of both citizens and suspects. A properly trained and responsible police force is essential for the enforcement and application of the law in every nation. And in order for India to attain this exhilaration and restore the public's trust in the police forces, quick changes are required.