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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

REFORMING CRIMINAL JUSTICE TO COMBAT HUMAN RIGHTS VIOLATION IN CUSTODY

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Abstract

India carries many legacies of the British era; one such legacy is the act of custodial violence. Custodial violence is one among the worst crimes against humanity and a naked infringement of human rights governed by the law. India is correcting many of its historical wrongs and driving towards positioning itself as a Vishwa Guru. Abolition of triple talaq and Article 370 are welcoming steps in this regard but what may create an obstacle is the alarming number of deaths in police custody. Annual report on torture, 2019 suggests that 5 deaths occur every day in police custody, the reason for such custodial death may include excessive power in the hands of police, low rate of conviction of police officers for custodial deaths, lack of proper training, and work pressure among others. Custodial violence causes physical, mental, financial, and social repercussions on the victims of such violence. From articles 21, and 22 of the Indian constitution to sections 35 (1)/ (2), 35(3)/ (6), 36, 37,38, 43, 46, 53, 187, and 196 of the Bhartiya Nagarik Suraksha Sanhita, 2023 there are many statutory and constitutional provisions to deal with custodial violence but that too with no effect as the data suggest otherwise. This paper delves into the issue of custodial violence, its reason, its impact, and the constitutional and international framework related to it. Besides this, the paper also focuses on the need for reforms in criminal justice system, together with some recommendations and suggestions.

Keywords: custodial violence, human rights, criminal justice reform, constitutional perspective, international perspective.

Introduction

“The extent of civilization in a society can be measured by entering its prisons.” Nelson Mandela agreed”. As he said, “one can know about a country only after visiting its jail.”¹ Custodial violence frequently makes headlines. The term custodial violence is not explicitly defined anywhere but the definition can be impliedly taken from various instruments and guidelines issued by the United Nations and other national bodies. It can be understood as any kind of physical, mental, or sexual abuse inflicted upon an individual while they are in the custody of law enforcement agencies. This doesn't only include violence occurring in police stations but also in social welfare institutions, immigration detention centres, and prisons. Such acts are considered as grave violation of human rights. Custodial violence usually kills detainees. It can be a subject of concern for a country who is often cherished as a mother of democracy, as it correlates to the denial of human rights and establishing legal accountability. In India, detainees are usually exposed to ill-treatment, torture, coercion, and violence, which usually kill them. Reforms within the criminal justice system are the demand of the time since there is a structural flaw. Committees like the national police commission (1977-1981), the Ribeiro Committee 1918, Padmanabha committee 2000, Malimath committee 2003 have been constituted for bringing reforms in criminal justice system. These committees have collectively emphasized the need for an independent, accountable, and people-centric justice system in India. National Human Rights Commission in December 1993 issued certain guidelines for custodial deaths, where it was made mandatory to notify the human rights commission of the concern state, about the death of any detainee within 24 hours of such deaths. Police officers have an expanded role to play here. They must undergo training on dealing with detainees and jail administration.²

Reason for custodial violence

There are baskets of malfunction on the part of police administration that led to custodial violence. Custodial violence as a matter of concern always makes headlines with commissions and committees suggesting a way to tackle this issue, but despite the widespread concern, no noticeable decrease in custodial violence has seen. National human rights data shows that death in custody continues to rise. The recent report by NHRC shows that 2150 custodial deaths occurred between 2021 and 2022, with Uttar Pradesh bagging the top position, with 448 deaths

¹ Nelson Mandela, Long Walk to Freedom (Little, Brown, 1994, p. Nd).

² National Human Rights Commission, Guidelines on Custodial Deaths, Dec. 1993.

alone. The authorities who are obligated with the task to protect the right are themselves become the prime violators. Some of the underlying reasons for custodial violence include

1. **Lack of training and stringent laws to punish police officers** There are many shortcomings in the investigation method of police. Police are not properly versed to carry out investigations.³ Unlike US police Indian police have to enforce rules and regulations in society as well as they have to investigate cases which are usually done by detectives in the USA, this even degrades the investigation, and due to inadequate investigation, police often resort to using third-degree treatment techniques, which lead to violence in custody. Ribeiro committee in its 1998 report has recommended for separation of investigation and law and order function of police. The police officers need to change their attitude towards the public, they must accept the that they are protectors and not violators. There are no stringent laws when it comes to punishing police officers for custodial deaths. From 2000-2020, 893 cases of custodial deaths have been listed out, of which only 358 police officers were charge-sheeted and only 26 of the policemen were convicted.

2. **Work pressure**

Indian police are not like Singham as depicted in the movies. The Status of Policing in India Report 2019 shows that 24 % of police work more than 16 hours a day and 44% work more than 12 hours. A working day is 14 hours long, on average. 73 % of police officers admit that the long hours of working hours wearing down on their mental and physical health. The condition of police officers is similar across all the states. A report highlights that in almost 21 states police work more than 11 hours to 18 hours daily on average. The vacancy of the posts also causes work pressure. Indian police population ratio is 148 police persons per 100, 000 people. Bureau of police research and development highlights that almost 22% vacancies in the police as of January 2017.⁴ These led to police officers using violence and shortcut methods to obtain confessions and evidence.

³ Sorna Lakshmi, "Custodial Violence: Causes, Consequences and Preventive Measures" 6 *Journal of Emerging Technologies and Innovative Research (JETIR)* 14 to 22 (2019).

⁴ It's not like Singham': Policemen in India work 14 hours a day and get few weekly offs, available at: <https://scroll.in/> (last visited on march 2, 2025)

3. Punitive actions

Several well-meaning but misinformed police officers believe that perpetrator should not evade punishment. They genuinely think that the only way to handle criminals is to administer a hard beating. According to the U.P. Police Commission 1970–71, “Wrongful convictions are a primary reason for the implementation of third-degree techniques. A significant segment of both the public and the police force believes that dealing with criminals—particularly those who are hardened—can effectively be done solely through third-degree methods. It has been recommended that a prison sentence no longer deters offenders. They seem to have accepted their time there, especially now that conditions in jails have started to improve compared to the outside world, and their only fear is being roughened up by the police. the criminal justice system overall is oriented towards punishment, a branch designed to serve public interest cannot operate effectively in that role⁵. The inherent nature of police work also becomes punitive due to systemic limitations, and many officers perceive their use of violence as an extension of the organization's punitive responsibility.

4. Lack of implementation of international standards

The failure to implement international standards has notably fuelled the increase in custodial violence in India. Although India is a signatory for torture (UNCAT) against the United Nations Conference, it has not yet confirmed the treaty. The lack of extensive anti -torture law aligning with global human rights criteria allows misconduct in custody and continuity of torture. Under the pressure to resolve cases rapidly, law enforcement agencies often resort to practices violating the rights of prisoners. Insufficient accountability measures and limited oversight create an environment of impunity. Also, the absence of independent monitoring bodies, as suggested by the Optional Protocol to UNCAT (OPCAT), allows custodial violence to happen out of public sight with minimal transparency.⁶ The scarcity of human rights tutoring for law enforcement personnel worsens the situation, as many lack knowledge of ethical interrogation techniques. The acceptance of violence as a strategy to extract the confession continues to destroy the law. To address custodial violence, India needs to

⁵ Sorna Lakshmi, “Custodial Violence: Causes, Consequences and Preventive Measures” 6 *Journal of Emerging Technologies and Innovative Research (JETIR)* 14 to 22 (2019).

⁶ Jaspreet Kaur, ““The Impact of Custodial Violence on the Criminal Justice System in India” 28 *Penacclaims* 1to 8 (2023).

standardise its legal structure with international standards, implement strict accountability and increase transparency.

Constitutional framework

The constitution of India doesn't unambiguously provide protection against custodial violence but implicit provisions can be identified in the Indian constitution that limit the use of power by the authorities and provide safeguards against the act of custodial violence. Indian constitution recognized the detainees right and provided them with dignified life like a freeman. Article 14 mentions about equality before the law and equal protection of the law. It declares that state shall not deny to any person equality before law or the equal protection of law⁷. The term equality before law is part of almost all written constitutions that provide for fundamental rights. Universal Declaration on Human Rights also contain this⁸. According to Professor Dicey absence of arbitrary power is one of the aspects of the Rule of law. According to prison data, two in three prisoners are from scheduled castes, scheduled tribes, or other backward classes. Individuals from the marginalized sections of society are on the receiving end of custodial violence. NCAT data shows that 125 people who died in custody in 2019 belonged to marginalized communities. Thus article 14 enunciates that all prisoner must be treated in a dignified manner irrespective of their caste, social or economic status.

Article 20 protects retrospective legislations, double jeopardy, and self-incrimination.⁹ This prevents the police from misusing their power by retrospectively applying harsher punishment to substantiate custodial violence. It safeguards the detainees from forced confession obtained through torture or coercion

Article 21 states that no person will be deprived of his life or personal freedom except according to the procedure established by the law. In Extra-judicial execution families Association V Union of India¹⁰, the Hon'ble Court said that Article 21 provides effective protection against all the precious rights guaranteed by constitution.¹¹ Any action that demonstrates the violation of article 21 would put judicial system on high alert to find out the whether there is a violation

⁷ Dr. J.N. PANDEY, *Constitutional Law of India* 81 (Central Law Agency, Prayagraj (Allahabad), 58th end., 2021

⁸Ibid

⁹ Ibid., p.270

¹⁰ ***Xtra-Judicial Execution Families Association v. Union of India, 2012***

¹¹ Dr. J.N. PANDEY, *Constitutional Law of India* 281 (Central Law Agency, Prayagraj (Allahabad), 58th end., 2021

or not, in case the court find so it would be its bounden duty to step in and protect those rights against unlawful onslaught of the state and State cannot cite the numbers of policemen killed to justify the custodial deaths and fake encounters¹². Thus article 21 prevents use of any punishment that is not warranted by the law or punishment that contains element human degradation.

Article 22(1) and 22(2) of the Indian Constitution establish essential legal safeguards to prohibit the misuse of power by authorities¹³. Article 22 (1) determines that no person can be taken into custody without informing the causes of their custody or denied access to the lawyer¹⁴Article 22 (2) said that any person arrested should be brought to a magistrate within 24 hours of arrest; while arresting, the police should follow the guidelines prescribed in the DK Basu case¹⁵

International framework

custodial violence as a matter of concern extends the boundary of India. United States of America while interrogating people in Guantanamo Bay uses very scary, loud insects and puts them in little boxes that are like coffins with the person that they are interrogating¹⁶ and they leave them there while the person screams and screams because of their fear of insects. British, the Israelis, and the United States use stress positions method where they put somebody in very painful positions, but they don't cause lasting damage to the body, but they're painful. During World War 2 custodial torture was in grave peril. Thus, the issue has been concerning of international community to bring an effective and solid legal framework to eradicate the problem.

The torture convention

It came into effect on June 26, 1987, and now has 138 parties. The Convention establishes as follows the definition of "torture": any action that inflicts intense ache or suffering, which can be either physical or mental, inflicted intentionally on an individual for the purposes of obtaining any information or a confession, done by public official or other person acting in an

¹² Ibid

¹³ Ibid, p 372

¹⁴ Ibid, p 372

¹⁵ Ibid, p 372

¹⁶ United nation human rights council, report on Guantanamo Bay interrogation methods (2006)

official capacity.¹⁷ It does not comprehend those suffering that occurs merely from, or incidental to legitimate sanctions. This convention prohibits torture at the global level. However, the convention doesn't prevent simple hurt but only prevents grievous hurt. Stubbing a cigarette on a human body, or beating up someone with some other objects are not strictly prohibited by the convention of torture. India was a signatory to "The United Nations Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment¹⁸" from 14th October 1997, but India did not ratify the same. Thus, enabling legislation for torture is needed for the convention to be ratified. Legislation against custodial torture with the definition of torture provided under the Convention and related Indian legal provisions will ensure a right against custodial torture for all persons in India. In 2010 Prevention of Torture Bill was tabled. Lower house of Indian parliament passed the bill on May 6, 2010, and subsequently was sent to a select committee with suggestions but because the 15th Lok Sabha had been dissolved, the bill is lapsed¹⁹. The bill was presented first time as a private member's bill in Rajya Sabha during 2017 then in Lok Sabha during 2018. It has been 78 years since independence, and India has yet to enact a law against torture. THE PREVENTION OF CUSTODIAL TORTURE BILL, 2023 was presented in Raj Sabha on 8 December 2023 for custodial torture, but it is also put in abeyance.

Universal declaration on human rights²⁰

United Nation General Assembly approved UDHR on 10 December 1948. UDHR is not a treaty therefore it doesn't create legal obligations for the countries²¹ UDHR serves as a catalyst to over 70 international human rights treaties. Its influence is observable in movements such as decolonization, anti-apartheid campaigns, and many worldwide struggles for freedom.

India has always been a prominent contributor to the universal declaration on human rights and the constitution of India is also guided by it. The very first article of UDHR stated that all human is born free and equal in dignity or rights²². The 5th article of the UDHR prohibits the

¹⁷ Arif Majruddin and Pooja Singh, "Custodial Violence in India with Reference to the Prevention of Torture Bill and International Legal Framework" 8 *International Journal of Law and Social Sciences (IJLS)* 33 to 46 (2022).

¹⁸ Sandra Jini Saju, "Critical Analysis of Custodial Violence and Role of Judiciary in India" 2 *Indian Journal of Integrated Research in Law* 1 to 12.

¹⁹ Ibid

²⁰ United nation universal declaration of human rights, Article 1&5, 1948

²¹ Ibid

²² ibid

act of torture. No one has a right to torture you. No one will be exposed to torture or cruel, inhuman or derogatory treatment²³. Universal human rights treaties include international covenant on political and civil rights; it is similar to the US Conference on European Conference. These treaties clearly do not force states to prosecute criminals; they bind states to "ensure" the rights within them.

there are five things a state needs to do in responding to egregious human rights violations by a government: (1) determine the identity, whereabouts, and fate of victims; (2) identify major perpetrators; (3) award reparations or provide compensation to victims; (4) take proactive steps to deter future human rights violations; and (5) punishment for those who violate human rights. Penalties may be giving fines, removal from office, demotion, forfeiture of government or military pensions, and exile.

2015 Nelson Mandela rules

Protecting the rights of prisoners has always been a tough task. Although crime rates are falling, the people in prison are increasing. It is estimated that over 10 million people are in prisons worldwide, excluding those detained by police or in other types of administrative custody without a charge or prosecution. In addition, people sentenced to life imprisonment increased by 84 percent between 2000 and 2014. Global trends also prove that violence in prisons has not decreased, subjecting most prisoners to no guarantee of a secure and safe environment. United Nations Congress on the Prevention of Crime in 1955 gives the standard minimum rules, that laid down how prisoners should be treated, in 2015 the United Nations General Assembly adopted it in wider form called as Nelson Mandela Rules. The rules provide detailed standards for safeguarding prisoners right. The rules prohibit chains or irons for prisoner's and also declare solitary confinement to be used in certain and expectational situation. Nelson, Mandela the most celebrated prisoner of the 20th century found solitary confinement as the most forbidding aspect of prison life. The rules also focus on providing better health facilities to the prisoners. The rules adopted in his name have become the worldwide blueprint for Governments to prove their performance.

²³ Ibid

Landmark judgements

Rudal shah v. state of Bihar²⁴

This case provides for monetary compensation in case there is a violation of the constitutional rights of citizens. The court directed the Bihar government to pay RS 35,000 as compensation to the victim of tortuous acts done by government employees. The petitioner had already completed his sentence, but the prison officials did not take care to release him, he was kept in jail for 14 years after his acquittal by the court. In *Sebastián M Hongray v Union of India*²⁵, two people were taken into custody by army authorities and died in their authority. It was presumed that they must have met with unnatural death while in army custody²⁶. Supreme Court directed the court to pay damages of 1 lakh. The court here called custodial violence as sordid and disturbing. The Supreme Court declared that unlawful detention not only violates the essential right to freedom but also requires restitution for the harmed individual.

Nila Bati Behar v State of Orissa²⁷

The deceased ages about 22 years were taken in the police custody for the offence of theft. He was handcuffed, tied, and kept in police custody. The accused was found dead at the railway track. Based on the medical report and evidence, it was found that the deceased had die due to beating, Supreme Court awarded 1. 50. 000 as an interim compensation²⁸. Court held that the precious right given under article 21 of the Indian constitution cannot be denied to convicts, undertrials, or detenues and other prisoners except according to the procured established by law²⁹. The payment of compensation is to provide relief to the family of such deceased.

Joginder Kumar v State of Uttar Pradesh³⁰

In the above case, the Court stated that an arrest must not be based solely on suspicion regarding a person's involvement in a crime; police officers must be convinced of the necessity for the arrest supported by some investigation, and they should document the reasons for the arrest in

²⁴ **Rudal Shah v. State of Bihar, 1983 4 SCC 141**

²⁵ **Sebastián M Hongray v. Union of India, 1983**

²⁶ Dr. Dipti Rekha Mohapatra, "Custodial Violence and Human Rights: Legal Implications" 5 *International Journal of Research in Management and Social Science* 82 to 91 (2017).

²⁷ **Nilabati Behera v. State of Orissa, 1993 2 SCC 746**

²⁸ Dr. J.N. PANDEY, *Constitutional Law of India* 468 (Central Law Agency, Prayagraj (Allahabad), 58th end., 2021

²⁹ Ibid

³⁰ *Jogindar Singh v. State of UP, 1994 4 SCC 260*

their records,³¹ In 'Sheela Barse v. State of Maharashtra,³² the court pressed the significance of Magistrates informing all detained individuals about their rights, that every arrestee should undergo a medical examination every 48 hours by a doctor from an authorized panel, and that copies of all required documents should be forwarded to the respective Magistrates, along with the right for the accused to consult with their lawyer.

Need for urgent criminal justice reform

After the first war of independence, famously called as the '1857 mutiny', the British legislator enacted the "Indian police act 1861", whose purpose is to suppress any kind of protest against the British government interestingly India being a democratic country is still following this archaic and colonial legislation. The police act, of 1861 does not satisfy the best interests of today's democratic society. Police as a subject matter falls within the jurisdiction of state. some states have made an effort to bring in new police acts but those too are heavily influenced by the old ones. several committees and commissions have been constituted to reform the criminal justice system. In 1902, the Fraser commission, chaired by Donald M. Fraser, noted that "the police force is far from effective; it suffers from poor training and inadequate organization, it is insufficiently supervised, it is widely perceived as corrupt and oppressive, and it has completely failed to earn the trust and cooperation of the public." Alarming, this 115-year-old Fraser committee assessment remains accurate even in the present scenario of the police system. Lack of training, infrastructure, inadaptability to technology impending vacancies, and outdated laws are the main reasons that highlight the demand for reforms in police. Police nowadays have become a mere puppet of politicians, with unchecked power in their hands. The second administrative reforms commission has highlighted this issue and recommended limited political power to the police. Lack of trust among the public also demands reform. A 2019 survey conducted by the centre for the study of developing societies highlights that only 25% of Indians trust the police compared to 54 % for the army³³. Reason for this can be attributed to unwelcoming attitude of police towards the citizens and shortage of personnel, combined with a lack of modern facilities, inadequate training, and political influence, results in coerced confessions and torture, frequently serving as the only method to solve criminal cases. research highlights that expenditure on police amounts only for 3% of the state and central budgets The

³¹ Dr. J.N. PANDEY, *Constitutional Law of India* 350 (Central Law Agency, Prayagraj (Allahabad), 58th end., 2021

³² **Sheela Barse v. State of Maharashtra, 1998 4 SCC 373**

³³ Baidya Mukherjee and Bhupinder Singh, "Urgent Need for Police Reforms in India: A Human Rights Concern" 8 *International Journal of Human Rights* 81 to 94 (2021).

Gore committee, established in November 1971 and led by Prof. M. S. Gore, a distinguished social scientist, was tasked with evaluating the current police reform initiatives and suggesting potential improvements for enhancing the effectiveness of police staff. The committee offered significant recommendations regarding training, emphasizing the importance of training in fostering essential knowledge and skills, shaping suitable attitudes, and assisting in the development of effective decision-making abilities. National police commission formed in 1977; submits eight reports on police reforms it demands for radical change in the system of working constables and emphasized the significance for training processes.

Recommendations and suggestions

The standing committee on home affairs chaired by Anand Sharma has presented its report on police reforms. The committee emphasis on need of using new technology to solve crimes. Programmes on artificial intelligence, robotics, drone technology, forensic and ballistic must be included to the police training. The committee recommended linking police stations to a particular university. A common minimum standard of police training must be maintained. States should introduce the model police act, 2015 as it modernizes the police system³⁴. The non-core functions within the police system can be delegated to the private agents to ease or reduce the work pressure on the police. Participation of women should be increased. Women should be provided with incentives, perks, and safety so that their greater representation can be ensured. Police as a subject should be put on a concurrent list allowing the central government to freely make legislation on them. Constables should be trained to be people centric as they remain in contact with common man. The budget allocated to police must be used for training, procurement, and technology deployment. More funds should be invested to modernize the police system. Assam and Kerala are improving their ground-level policing through initiatives like the janamaithri Suraksha project and Meira Paibi.³⁵ The Hon'ble supreme court in Prakash Singh vs union of India has laid down the following mandates.

1. Establishment of a state security commission in each state
2. Police Establishment Board to decide the posting, transfer, and promotion of officers below the rank of DSP and recommendations on the above-stated matters to the state government for officials of higher rank,

³⁴ Murugesan SRINIVASAN and Jane EYRE MATHEW, "Victims and the Criminal Justice System in India: Need for a Paradigm Shift in the Justice System" *Temida* 51 to 62 (2007).

³⁵ Baidya Mukherjee and Bhupinder Singh, "Urgent Need for Police Reforms in India: A Human Rights Concern" 8 *International Journal of Human Rights* 81 to 94 (2021).

3. Police Complaint Authorities at state and district level,
4. Transparent appointment procedure for DGP and other key officers and desirability of giving minimum fixed tenure,
5. Separation of the investigating police from law-and-order police.

Conclusion

An increasing number of custodial deaths is highlighting the sordid condition of Indian society. Custodial violence not only takes the lives of victims but also erodes the public trust and principles of natural justice and fairness. Lack of proper training and work pressure sometimes force the police to use violent ways to solve the case. However, police officers after causing such havoc continue to receive support from the state. It's been 78 years of independence and India is still to make any stringent laws against such atrocities of police. Even though the Indian constitution and some international treaties together with some judgments of the apex court have come to a rescue that to with no major effect as data suggest otherwise. It is the need of the hour for India to get a stringent law to prevent custodial violence and police atrocities in all its forms. Everyone whether he is a freeman or a detainee has a right to life and liberty and no authority can take that away from individuals. Malimath committee, e Gore committee. National police commission; Fraser Committee and many more commissions and committees have been formed to bring reform within the criminal justice system. But everything is just on paper, no recommendations and suggestions have been completely adopted and implemented by any state. It's been 19 years since the landmark case Prakash Singh v Union of India laid down important guidelines for police reforms and till now only two states have implemented this completely. By addressing this problem India can move closer to a society where justice prevails, where fundamental rights and human rights of people are protected and every individual is treated with dignity and then India can position itself as "Vishu Guru"