



E-ISSN: 2789-8830  
P-ISSN: 2789-8822  
IJCLLR 2023; 3(2): 10-15  
Received: 14-04-2023  
Accepted: 19-05-2023

**Praneeta Kumari**  
Ph.D., Research Scholar,  
Department of Laws, HPU,  
Summerhill, Shimla, Himachal  
Pradesh, India

**Dr. Seema Kashyap**  
Associate Professor  
University Institute of Legal  
Studies HP University,  
Shimla, Himachal Pradesh,  
India

**Correspondence**  
**Praneeta Kumari**  
Ph.D., Research Scholar,  
Department of Laws, HPU,  
Summerhill, Shimla, Himachal  
Pradesh, India

# International Journal of Civil Law and Legal Research

## Unabated custodial violence in India: A critical study

**Praneeta Kumari and Dr. Seema Kashyap**

### Abstract

This article is dealing with the issue of custodial violence in India. Custodial violence is not a new phenomenon. The term of custodial violence has not been defined under any law. Custodial violence is an annexation of two word custody and violence, the custodial violence is a common term and unite all and every type of torture, third degree, harassment, brutality, use of force not warranted by law, etc. custodial violence include illegal or on insufficient grounds using third degree method, not allowing them to sleep, extorting confession under pressure, misuse of the power regarding not allowing to meet counsel or family member to accused, denial of food etc.

**Keywords:** Domestic, violence, discrimination, exploitation, constitutional, legal, judicial, response, rehabilitant, dejure, defacto, maternity, diagnostic, promulgated, safeguard

### Introduction

Violence is a grave problem which is continuously threatening the peace, security and stability of the entire world but there is a lack of consensus on arriving at a single universally acceptable definition of this phenomenon. It is not just a law and order problem but is a different type of criminality which is more serious in nature, grave in its impact and its consequences are extremely dangerous as compared to other crimes. Custodial violence is committed by the police officers, who is the guardian of the law. The heinous of the crime is that crime it is committed upon the citizens by the very person who is considered to be the guardian of the citizens. It is committed under shield of uniform and authority within the four walls of police station or lock up, the victim being totally helpless in these circumstance. Custodial violence committed by police on persons in its custody are greater than any other form of violence. the basic reason behind it is that the victims of such violence are unable to protect against it. Death in custody is generally not shown on records of the lock up and every effort is made by the police to dispose of the body <sup>[1]</sup>.

### Ustodial violence in India...past and present scenario

#### Custodial violence in ancient India

In the ancient India governance was ruled by Danda and Dharma. The Dandniti was an essential ingredient of a state craft. In dharma sutra proper wielding of "Danda" was held to be an important duty of the king. The basic unit of policing was the village: a village being an aggregation of families together with their land and postures surrounding the village. Every village has its local court which was composed of the head man and the elders of the village. The Mahabharat mentions Gramadhipati and the Buddhist Jataks speak of gram Bhojaka, Nagraguthka was responsible for arresting and executing Robbers. There is a reference in the Ramayana about the police as the regulative Mechouism for peace and order.

#### Kautilya arthsastra.

Kautilya's Arthsasthra speaks about various kind of torture such as burning of limbs, tearing by wild animals, trampling to death by elements and bulls, cutting of limbs and mutilation etc. <sup>[2]</sup>.

<sup>1</sup> N.S. Kamboj, "Police Custodial Death: A Gíowing Abuse to Human Rights in India", JILI, Volume 36, July-September. 1994.

<sup>2</sup> <https://hi.m.wikipedia.org>

### **Buddhist Period**

The Buddhist period (320 BC- 300 AD) was an age of great humanitarianism and the administration of justice had become correspondingly influenced by humanitarianism ideals. Custodial torture in any form was strictly forbidden and special favours were shown to prisoners who happened to be women, aged or who had many dependents <sup>[3]</sup>.

### **Gupta period**

In the Gupta period if facts against a prisoner were not clearly established by evidence then recourse to four kinds of ordeals was meted out. Trial by ordeals was fairly common. During the six and half centuries intervening between the deaths of Harsha in 650 AD to rise of Mohamadden power, not much information is available the criminal justice system. Generally speaking, a medley of petty hind kingdom with ever varying boundaries was carelessly engaged in dynastic wars. In the Mohamadden period the Shariat law was applied to crimes. An eye for an eye, tooth for tooth, cutting of limbs and torture to extract confession was wide spread. A thief's hands were to be cut off and the adulterer and the adulteress were stoned to death <sup>[4]</sup>.

### **Mughal Period**

Under the Mughals regime, no criminal or civil code existed. The Shariat was in force. Torture in custody to extort confession was widespread. But the quality of justice depended by successive emperors was by no means uniform. Akbar certainly tried to avoid harsh treatment to prisoner by his officials. The deliberations which characterized the infliction of punishment by Akbar were absent from Jahagir dispensation of justice. Under Jahagir, trial were quick and so also were executions, hangings, beheading, impaling, killing with dogs, by elephant, serpents etc <sup>[5]</sup>.

The key police function during the Mughal period Faujdaar and Kotwwal'. A maximum of village were group together to form of mahal. A number of pargands forward a Sarkaar and a number of sarkaar forward a subaah aor province. The faujdaar was responsible for policing the town, cities. The function of the Kotwwal are described in the book of 'Aini-i- Akbari'. He prevented crimes and social abuses, regulated cemeteries, burials, jails and took charge of heirless property. He patrolled the city at night and collected information on man and matters. The end of his appointment were to ensure that there was no crime in the city. In a register he note down the addressed and profession of every resident of the town and cities, and observed the income and expense of various classes of men and checked the accuracy of weight and measures. Preparation and distribution of intoxicants and the profession of prostitutes were controlled by him. That's by his role and functions were prevented, accurately and regulatory.

<sup>3</sup> <https://www.legalsevicindia.com>

<sup>4</sup> Ibid

<sup>5</sup> <https://en.m.wikipedia.org>

### **Maratha period**

In the Maratha kingdom, many varieties of torture were employed. Cut of their hands and feet, ears and nose, pouring molten lead into the throat, crushing the bones of the hands and feet with mallets driving iron nails into the hand, feet and bosom. These are many similar tortures were used to establish the guilt of the captured person <sup>[6]</sup>.

### **British period**

With the end of the Mughal Empire and till the advent of the British rule in India, the criminal justice system did not exit. In the early year of their rule, the Britisher found gangs of professional and hereditary robbers and murderers known as thugs who extended their crime in very remote parts <sup>[7]</sup>. The inhabitant were indiscriminately apprehended on false charges and detain in jails for year before they were brought for trial and many of them perished in jails. Tortured by officials including Kotwals was widely prevented resulting in deaths sooner or later. The Britisher evolved order from chaos and destroyed thug's organization, put down barbaric social custom and built up the Judiciary, the police, and the jails codified law.

The British raj also notorious for its police excesses. The police was on agent of imperial brutality and earned an image of being anti-police men women and children were caught and beaten and tortured to wake they confess to crimes they commit or did not commit. They wanted a police system 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. Administration of justice was not their main concern. Torture during their period was mainly carried out by revenue collectors to collect revenue. Political workers were also picked for questioning and if they did not provide the kind of replies the police wanted they were subjected to torture, primitive police, and threatening police could administration only wounded justice to the people in India. Torture commission 1855 appointed by British government for investigation of alleged cases of torture in Madras presidency in its report highlighted that police torture quiet prevented torture. The recommendation of the torture Commission, 1860. The police Commission, 1860 recommended the abolition of the military police as a separate organization and suggested for the constitution a single homogenous force of civil constabulary under the proposed police act, 1861. The Indian police Commission (1902-1903) explore the performance of the police after forty years of working of police act, 1861. The Commission found that the police force was far from efficient. There were defects in training and organization, was inadequately supervised was regarded and perceived as corrupt and oppressive and it failed completely to get the confidence and cooperation of the people <sup>[8]</sup>.

### **Post Independence Period**

<sup>6</sup> <https://menomaitha.com>

<sup>7</sup> <https://www.thoughtco.com>

<sup>8</sup> <https://police.py.gov.in>

After independence several police commission were appointed by union and state government. To look into the performance and methods of working of two state police during 1950, 1960, to early 1970 and 1980. All most these committees and commission have revealed the tale of tried degree or torture in police custody due to political ends, practice of corruption and lack of infrastructure support of scientific aids and training etc. the recommendations of most of these commission were mainly concerned with the details of the administrative set up, the strength of the police force in different wings of the system, the relationship between police and the principal district collectors, allowance for the police in different ranks, qualities for recruitment, settling up of training centre. Shah commission (1978) observed the police brutality on a wide range during the emergencies, from 1975 to 1977<sup>[9]</sup>. The commission drew attention of the government the way of police behaved during the emergencies as they were not accountable to any public authority.

### **The national police commission**

The national commission examined in detail the issue pertaining to police functioning inter alia in its eight reports in its first report, the commission observed. Police are frequently criticized for their use of third degree methods during investigation while examining suspected or accused person. Police brutality in their handling suspect is referred to in some context or the other in the literature on police forces in several countries of the world, and the Indian police is no exception. Interrogation of a person, weather he be a witness or accused, is a difficult and dedicate exercise for any police officer and calls for enormous patience and considerable and understanding of human psychology. Unfortunately several police officers under pressure of work and driven by a desire to achieved quick results, leave the path of patience and right interrogation and resort to the use of force in different forms to pressure the witness or suspect to disclosed the fact know to him<sup>[10]</sup>,

### **Padhmanabhaiah Committee on Police Reforms (2000)**

Padhmanabhaiah Committee was constituted to study, inter alia, recruitment procedures for the police force, training, duties and responsibilities for the police behaviors, police investigation and prosecution. The committee observed that every commission and committee in the past was repeatedly stressed the need for better utilization of scientific aid in investigation and for reduction of custodial violence. However, the state of forensic science in India and its use by police in investigation of crime all both in apathetic state. Therefore the committee recommended that every police station should be equipped with in investigation kits' and every sub- division should have a mobile forensic science kits. But sadly these recommendation have not been implemented due to limited resources with the government<sup>[11]</sup>.

### **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. The committee has examined the fundament and principal of the functioning of criminal justice system such as right to science. Right of accused, presumption of innocence and burden of proof, justice to the victims of crime etc.<sup>[12]</sup>. The committee recommended that audio and video recording of statements of witnesses, dying declaration and confession should be authorized by law. Interrogation centre should be shut up at the district headquarters, in each district, where they do not exist and be strengthened where they exist, with facilities like take recording and/or videography and photography.

### **Police Act Drafting Committee (2005)**

In this committee, the government of India having visualized the long felt need to replace the outdated police act, 1861 set up a police act drafting committee (PADC) in September 2005 to draft a new police act that could meet inter alia, the growing challenges to policing and to fulfill the democratic aspirations of the people. In drafting the model police act 2006 the committee was guided by the need to have a professional police act, 2006. The act provides for social responsibilities of the people and emphasizes that the police and emphasizes that the police will be governed by the principles of impartiality and human rights norms, with in special attention to protection of weaker sections of society including minorities. It also contains a provision that the composition of police will reflect social diversity. The other salient features of model act include functional autonomy, encouraging professionalism, accountability paramount, improved service conditions and role of protecting internal security in light of new threats which are emerging<sup>[13]</sup>.

"The doctrine of natural rights into a realm of practical reality and influenced the drafting of the Magna Carta (1215 ad), British bill of right (1689), the declaration of Independence (1718), the declaration of right of man and citizen (1718) formed part of USA constitution. Gradually the concept of natural rights developed. The traditionally known natural rights come to be known as fundamental rights in the modern democracies<sup>[14]</sup>.

Remedies available against custodial violence

Statutory safeguards

Indian evidence act, 1872.

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession apès to the making of the confession appears to the court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person (Section 24 of Indian Evidence Act, 1872). Section 25 Indian

<sup>9</sup> <https://en.m.wikipedia.org>

<sup>10</sup> <https://humanightsinitiative.org>

<sup>11</sup> <https://humanightsinitiative.org>

<sup>12</sup> [www.thehindu.com](http://www.thehindu.com)

<sup>13</sup> <https://www.mha.gov.in>

<sup>14</sup> <https://en.m.wikipedia.org>

Evidence Act, 1872 says that confession made by arrest person is not accepted <sup>[15]</sup>.

### **Code of Criminal Procedure, 1973**

Section 46 and 49 of the code protect those under custody from torture who are not accused of an offence punishable with death or imprisonment for life and also during escape. Section 46 prescribes the modes of arrest. Arrest in legal sense under the code means taking into custody of another person under authority of law. The arrested person shall not be unnecessary restraint under section 49 of the act. Section 50-56 of the code protect the arrested person. Section 50-56 are in consonance with article 22 of the Indian Constitution <sup>[16]</sup>.

### **Indian Penal Code (IPC), 1860**

The act provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same (section 7 and section 29 of IPC). Section 376(1), (b) penalizes custodial rape committed by police officers. Section 330, 331, 342 and 348 of IPC have saliently been designed to deter a police officer, who is empowered to arrest a person and to interrogate <sup>[17]</sup>.

### **Constitutional Safeguards**

The constitution works of India also incorporate them in part iii of the Indian constitution. Article 20 primarily gives a person the rights against conviction of offence. The constitution of India guarantees the right of life of a person under article 21. These includes being informed of grounds of arrest, to be defended by a legal practitioner of his choice, preventive detention laws and production before the nearest magistrate with 24 hours of arrest of the person. Also includes protection against inhuman torture and any act which damages or injuries or interfere with the USA of any limb, faculty of a person, either permanently or temporarily. Everyone has the right to live with human dignity <sup>[18]</sup>.

### **Recent incident relating to custodial violence**

Recent case relating to custodial death happened in Tamil Nadu. A father and son-P Jeyraj, 58 and his son benix, 31-running a mobile accessory shop in Sathankulam town in Tutuicorin district were arrested by some policemen allegedly for keeping the shop open past permitted hours. Tamil Nadu has imposed a strict lockdown to curb Covid <sup>[19]</sup>. The duo were taken police station where, they were brutally assaulted. After that they were noticeable dead in jail (14) In Charu, Rajsthan a young boy (22 year old) apparently died in police custody. Police officers said that the 22 year old man was arrested on July 6 for theft and died

on the same night in police custody. (15) Vijay Singh <sup>[20]</sup> A 26 year old boy, died in police custody at Mumbai Wadala Truck Terminal police station. Thereafter 5 police personnel suspended in connection with custodial death of Vijay Singh. On September 17, 2022, another custodial death has been reported in kithara, Bihar. A 40- year-old man was found dead in lock-up following which the villagers went on a rampage and ransacked two police stations leading to a law and order situation.

### **Landmark judgements on custodial violence**

Joginder Kumar v. State of U.P. and Others <sup>[21]</sup>, the Hon'ble Court Issued the following guidelines: The police officer shall inform the arrested person when he is brought to the police station of this right. These rights are inherent in Article 21 and Article 22(1) of constitution law of India. J Prabhavathamma V. The State of Kerala & Others <sup>[22]</sup> CBI court, awarded the death sentence to the two police officers. The judge J Nazar had said: "this is a brutal and dishonorable murder by accused persons. The acts of accused persons would definitely adversely affect the police department. If the faith of the people is lost, that will affect the public order and law and order, and it is a dangerous situation.

D.K. Basu v. State of West Bengal <sup>[23]</sup>. The Court issued guidelines relating in all case of arrest and detention. The guidelines are as follows details of all personnel handing the Interrogations of the arrested person must be recorded in a register. It must be signed by the detainee. And must contain the time and date of the arrest 19.

Sometimes due to weak health condition or less power of endurance, they die in the custody without there being any intention of causing their death by the custodial, in comparatively less beating or torture. Sometime there are deliberate custodial killing in the form of fake encounters, stage managed encounter or they are killing while escaping from the custody or while taking confession. Such killing may be resorted to as a crime control measure to deal with for instance, a hard criminal or a violent terrorist who cannot be effectively handled through the uncertain and often frustrating normal process of law, and who avoid the drudgery, hard work and effort usually Involved in the same cases, even for totally molafide motives under pressures to liquidate an inconvenient person Custodial violence such as lock up deaths, unlawful detentions, custodial rapes and, physical violence are not tolerated by any faith or culture, which respects humanity. Theviolence committed in various forms of the detainee in the custody of the government agencies is a matter of grove condemn.

A reading of the morning newspaper and watching news channels almost every day which carries and shown and reports of dehumanizing torture, violence, assaults, rape, molestation and death in custody of police or other government agencies is depressing. Their increase in

<sup>15</sup> Batuk Lal, Ehe Law of Evidence, Centíal Law Agency; c2012. p. 57

<sup>16</sup> SN Mishía, Ehe Code of Cíiminal Píoceduíe, Centíal Law Agency; c2012. p.50-58

<sup>17</sup> Batuk Lal, Indian Penal Code, Centíal Law Agency(2012) p. 45

<sup>18</sup> Naíendeí Kumaí, Constitution Law of India, Allahabad Law Agency; c2010. p. 276, p. 294,

<sup>19</sup> www.hindu.com

<sup>20</sup> www.ndtv.com

<sup>21</sup> AIR 1994 SC 1349

<sup>22</sup> 2007 (k) and CRL. R.P.2902 of 2007

<sup>23</sup> AIR1997 SC610

alarming proportion is affecting the credibility of the rule of law and the administration of criminal justice system. The third report of national police commission in India also expressed its deep concern with custodial violence and lock-up death and its demoralizing effect on the society as a whole. The law commission of India in its report presented to the parliament stated that, the alarming rise in custodial crimes has picked the conscience of society and has evoked public outcry against law-enforcing agencies. Complaints of abuse of power, torture and violence of suspects in custody of police and other law enforcing agencies is the concern of the society. Such crimes are heinous and offensive as they respect betrayal of all of the custodial trust by a public authority against the defenceless citizen and violate fundamental rights and human rights. There is a pressing need to control this malady. A death in a police custody is to look like a suicide or an accident and the body is disposed of quickly without postmortem. The records are manipulated and evidence are destroyed to shield the police personnel responsible for the crime. Political influence is used to push up the matter and thus crime goes unpublished. The relatives and friends of the victim are unable to seek justice because of fear, poverty and ignorance of law. Most of the tortures and custodial deaths occur while the police try to extract confession from the accused during interrogation. This development is a constitutional order in India, the Genesis of human rights for all people can be found in Vedic scriptures of Hinduism. The Vedas, the metrical religious works of the ancient Hindus offer guidance. Inter alia on religious and social obligations these constituted the base on which the Hindu law was built. The golden threads of human rights run through the entire constitution of India. The part III and Part IV of constitution of India secure these human rights. The fundamental duties and independent effective judiciary are some of the important mechanisms for the protection of human rights of all the people irrespective of the cast, creed, sex, religion, region or language of its people. However the fact remains that there is a wide gap between theory and practice. Custodial violence and custodial rapes and deaths are rampant in India.

People's atrocities are a common feature of Indian scenario, these violations are committed under the shield of uniform and authority between four walls of police station. Lock-up and prison. Where the victim are totally helpless, custodial violence may take any form they disappearance of the suspected person who ought to have been in the police custody, deaths in fake encounters and at police station and under trial detained in jails for years without any trial extensive violence against women in the form of abusing, beating, molestation, rape, etc.

Despite constitutional and statutory provisions safeguarding the liberty and the life and individual, the growing incidents of custodial torture and death have become a disturbing factor in the society. It is distressing to find the glory tales of dehumanizing torture, assault and deaths, in the custody of police almost in every morning newspaper. The alarming rise in custodial crimes has picked the conscience of every

section of society and it has evoked public shouting against the law and enforcing agencies, especially the police and directorate of a revenue intelligence enforcement directorate.

### Conclusion

The victims of custodial are belong to weaker sections of society. The poor the downtrodden and ignorant with little or no political or financial power, are unable to protect their interest. Member of the weaker and poorer section of society are arrested informally and kept in police records. During the informal detention they are subjected to torture, which at the body of the deceased is disposed secretly or thrown records are manipulated to shield the suicide or accident. Victims' relatives are unable to seek protection of law on account of their poverty, ignorance and illiteracy. But even if some voluntary organization take up their case or public interest litigation is initiated against the sinful public officer, no effective or speedy remedy is available to them as a result. Of which the sinful public officers go scot free. This situation gives rise to a belief that the laws, protection is meant for the rich and not for the poor. If the incidents of custodial crimes are not controlled or eliminated, the constitution, the law, and the state would have no meaning to the people which may ultimately lead to anarchy and destabilization of the society. There is a need to amend laws, both substantive and procedural, to minimize the occurrence of the custodial crimes. There has been definitely a change in the outlook of the society, the government and the judiciary and all of them recognize the rights of the detainees, under trials and convicts but a lot more need to be done to impact justice to each and every person.

### References

1. Bloch Hirbert, *A Man Crime and Society*, Random House Publication, New York; c1962.
2. Bakshi PM. *The Constitution law of India* Printice Hall, New Delhi; c1982.
3. Chandra Jain, *The Constitution of India Metropolitan*, New Delhi; c2008.
4. Chandrall, Gupta GN. *Human Right Atlantic Publishers*, Delhi; c2000.
5. Chauhan OP. Lalit Dadwal. *Human Rights Protection and Protection*, Anmol Publications, New Delhi; c2002.
6. Datir RN. *Prison as a Social System: With special reference to Maharashtra State*; c1978.)
7. Dash, Sukla. *Crime and Punishment in Ancient India*, Abhinav Publication, New Delhi; c1977.
8. Deshta Sunil, Deshta Kirse, *Fundamental Human Rights*, Deep and Deep Publications, New Delhi; c2005.
9. Kumar Narender. *Constitutional Law of India*, Allahabad Law Agency; c2010.
10. Mishra SN. *Indian Penal Code*, Central Law Publications; c2016.
11. Tripathi NM. *Human Rights and Fundamental Freedoms*, Bombay; c1975.

12. Ratan Lal, Dhirajal. The Indian Penal Code Wadwa & Company Law Publishers; c2000.
13. Sen AN. Human Rights Sri Sal Law Publications, Faridabad; c2002.
14. Sharma SD. Administrations of Justice in Ancient India, Herman Publishing House, Delhi; c1998.
15. Sharma, Gokulesh. Human Rights and Legal Remedies, Deep and Deep Publishing New Delhi; c2000.
16. Stone Julius. Human Law and Human Justice Maitland, Sydney (1968) Ali Mohd. Wasim, "Human Rights and Custodial Violence, CML. Vols 1 & 2, Jan-March, ,
17. Arora Nirman, "Custodial in Police Station in India, Radical Assessment, JILL (1995 Apr-Jun). 1999 Jul-Dec;41:Nos 3 & 4.
18. Chaubey Munish Kumar, Chaubey Saumya. Human Rights vis-à-vis Right to Education in India, Civil & Military Law Journal. 2005 Jul-Sep;59:5.
19. Kamboj NS. Police Custodial Death; A Growing Abused to Human Rights in India JILL. 1994 July-Sept. Vol. 36, Prison Act; c1894.
20. The Constitution of India; c1950.
21. The Contempt of Court Act; c1971.
22. The Indian Evidence Act; c1872.
23. The Indian Penal Code; c1860.
24. The Protection of Human Rights Act; c1993.
25. <https://www.ndtv.com>
26. <https://www.mha.gov.in>
27. <https://humanrightssinitiative.org>
28. [www.thehindu.com](http://www.thehindu.com)
29. <https://en.m.wikipedia.org>
30. <https://menomarth.com>
31. <https://www.thoughtco.com>