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CUSTODIAL VIOLENCE AND THE LAW

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Abstract

Custodial violence is essentially a trend perpetrated on individuals worldwide irrespective of their race, sex, age, or state of health. Custodial violence in a third world country like India is a serious and disturbing problem. Brutal atrocities perpetuated by law enforcement agencies are growing at an unprecedented pace on prosecutions, offenders and convicts. Custodial abuse is not limited to any single segment of the population but applies to economically disadvantaged and socially marginalized parts of the society that make up the majority of the victims of torture. Universal prohibition of custodial abuse and its constitutional and legal protections have failed to deter or raising the occurrence of torture and custodial deaths. Custodial abuse is a s serious an issue in judicial custody as in police custody. Maltreatment and violent abuse are officials' everyday routine leading to significant numbers of death in detention.

This paper is an effort to examine the human rights abuses, prisoners' rights as set out in the constitutional clause, procedural protections and redress available to victims of custodial abuse. The present paper addresses the flaw in state governance. This seeks to shield the people of India from police custodial abuse. The essence, pattern, and tactics of custodial violence adopted by police in India are thoroughly examined. Researcher in this paper will also concentrate on media position in raising consciousness about the custodial crimes that are taking place in the current scenario.

Keywords: Custody, Violence, Torture, State Government, Policies.

INTRODUCTION

India is a federal, liberal, secular, socialist republic. All aspects of the Republic of India are focused on the rights of man: the people's sovereignty over the entire nation's capital, democratic liberation that prohibited religious intolerance and the socialist collection of economic, cultural and other rights. The Republican system is meaningful and is clarified in the preamble, parts III & IV, which are named the conscience of the Constitution. India is a democracy that pushes sustainable development forward. Yet India's political traditions have suffered considerable losses because of non-democratic government methods. It does not need to add that genuine democracy ensures the security of people and property of its inhabitants and that lives are free of terror and repression. What democracy entails is not the simple presence of a constitution and the opportunity to cast a ballot someday.

Torment or brutality in a layman's language signifies 'savagery,' 'monstrosity,' and 'harming,' intentionally instigating implausible physical and psychological agony so as to rebuff or get data, or to constrain one to admit to something. As indicated by the word reference, 'savagery' signifies a conduct that damages or harms genuinely, and where an extraordinary power or vitality is utilized. The term 'authority' isn't characterized either in procedural law or in considerable law. Yet, that implies ensuring your consideration. As indicated by the word reference, 'guardianship' is the legitimate right or obligation to think about somebody. It is a condition of brief care or detainment, particularly by the police. Care implies the consideration and control of someone or something for assessment, conservation and security. At the point when the appointed authority awards guardianship of the guilty party to the restorative authority over the wrongdoer, this must be utilized to help the strength of the guilty party. The word authority alludes to guardianship and security. In any event, when mentioned to demonstrate capture or detainment, there are no stressing manifestations of savagery during care.

Custodial brutality implies any sort of viciousness submitted in guardianship, regardless of whether lawful or not, that isn't worthy under land law. Viciousness can be unobtrusive or outrageous, for example, misuse, enthusiastic or physical brutality, whipping and beating, assault or even passing. The concept of guardianship could be civil, police, or under some foundation that is required to work with prisoners, for example, hospitals, houses, and so on, or it could be in the custody of psychological oppressor associations, furnished meetings, or activists, and so on. Torment in the police or other forms of treatment are examples of custodial savagery.



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METHODOLOGY

The researcher's aim in this paper is to do a doctrinal study of the numerous surveys on custodial abuse reported in India, as well as to analyze the data to determine the overall amount of misconduct in the area. The aim of the research is to provide a comprehensive view of the issue of custodial violence from the viewpoints of witnesses, victims, relatives, officials, academics, and others.

INDIAN LEGAL FRAMEWORK FOR COMBATING CUSTODIAL CRIMES

In the current segment, the researcher rapidly provides verifiable reform of legal frameworks, regulation, and equal care model as legal mechanism to combat custodial abuses of police guardianship. The Indian legal system, both existing and legal, includes arrangements relating to shields capture, imprisonment, custodial torment, and other wrongdoings in guardianship.

The substantive law, such as the Indian Penal Code of 1861, punishes a resident who causes injury, torment, or death to a person in custody's body. The procedural law, for example, the Criminal Procedural Code of 1973 and the Indian Evidence Act of 1872, provide a few provisions protecting a person in care's legitimate rights. The vast legal careers have improved the Constitutional and relevant legal structures in the matter. Furthermore, the Protection of Human Rights Act of 1993 mandates that the National and State Human Rights Commissions, as well as the Human Rights Courts, regulate detainees' human rights more strictly. India has ratified, acceded and signed the International Declarations, Covenants, Conventions and treaties such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Right (ICESCR), International Convention on the Elimination of All forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Right of the Child (CRC), Convention against Torture and Other Cruel, inhuman or Degrading Treatment and Punishment (CAT), and the International Convention on the protection of the Rights of All persons against Enforced Disappearance (CPAED).

RIGHTS OF THE ACCUSED UNDER INDIAN CONSTITUTION

Part III of the Constitution addresses civil liberties. Articles 20, 21, and 22 of the Constitution enact prohibitions that are directly applicable to criminal law. Article 20 (1) forbids the application of criminal law retroactively. Article 20(2) defends against being prosecuted again for the same offense. According to Article 20(3), no person accused of a crime is required to testify against himself or herself. Naturally, the Constitution provision protects from testimonial obligation on the basis that any liability must be implicit regardless of the accused party's coercion¹. According to Article 21², no one shall be denied life or personal freedom except in accordance with the process established by statute and the Constitution. The expression "life and personal rights" in the Article provides a person imprisoned and held with constitutional protection from torture, violence, or death.

Following are the illustrative rulings, the penalty which includes an aspect of torture was held to be unconstitutional in *Dastagir v. State of Madras*, AIR, 1960 SC 75.

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

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

3. indiankanoon.org. 2021. Section 57 in The Code of Criminal Procedure, 1973. [online] Available at: <<https://indiankanoon.org/doc/571025/>> [Accessed 17 May 2021].

In case of *Inderjeet v. State of Uttar Pradesh*, The Supreme Court rules that the jail limitations on abuse, coercion, or violation, which go well beyond judicial authority, are unconstitutionally broad, and that prisons cannot subject under trial or convicted prisoners to physical or psychological constraints that are not warranted, or that add up to human misconduct in regard to the Court's discipline (*Seela Barse v. Maharashtra Territory* AIR 1983 SC 378). For the present purpose, additional provisions in Articles 22(1) and 22(2) of



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the Constitution exist, one of which is to guarantee that specific requirements remain in the legislation to preclude misuse of the capture and containment force. Article 25(1) states that no individual taken into custody is secured or denied the right to counsel or to be represented by a legitimate practitioner of the decision without having been educated until they will be, or are able to be, on the basis of such detention. Article 22(2) states that each person caught in and confined in care is produced before the nearest Magistrate within 24 hours of capture, and that the capture to the Court of the Magistrate shall be performed in the absence of a Magistrate without the authority of a Magistrate and without the time taken for the tour process.

CODE OF CRIMINAL PROCEDURE, 1973

The significance of the 1973 Code of Criminal Law, various conditions in which custodial offenses are included, ranging from permanent detention in custody to fines for custodial neglect. Section 50 of the Code includes information about the conditions for detention and bail⁴¹. This segment was deemed mandatory, particularly in light of protective insurance, to make capture and imprisonment illegal in the segment by rebelliousness (*Ashen v. The Police*, 1987 Cri. LJ 1750). In cases with an object of torture, the person apprehended is entitled to a psychological assessment under Section 54 of the Code.

Sections 56, 57, and 58 govern arrest-related acts. Section 56 of the Code states that the investigating officer must bring an individual detained before a judge with jurisdiction in this situation or before a police officer in custody without a warrant, without unreasonable delay, and with bail requirements. According to Section 57³, in the absence of a special order from the Magistrate under Article 167, A police officer may not arrest a person arrested without a warrant any longer than is necessary in certain conditions, and the period of detention should not extend 24 hours, except for the time required to travel from the Magistrate's position to the Magistrate's court, and the requirements mentioned under Section 57 are obligatory.

Section 58 allows commanding officers of law enforcement to notify to the district magistrate or jurisdiction magistrate that certain people have been approved to be bailed or not to announce to the district magistrate or jurisdiction magistrate on cases with people convicted without a warrant. When an adult's custody is subject to an order under the 1973 Code of Criminal Practice, Sections 70-81 of this Code apply, with Sections 75 and 76 being commonly applicable. The object of Section 75 is to notify the person detained and taken before the Court of the content of the warrant within 24 hours of notice, and Section 76 allows for the time needed to move from the place of arrest to the next Court. Section 160(1) of the Code, covering the right of witnesses to be present, provides a significant clause in the context of police detention. Given the express prohibition, and the fact that women of any age are not named, males under the age of 15 in a place other than their home, this section is extremely important.

THE INDIAN PENAL CODE, 1860

The Indian Penal Code is a disciplinary statute that makes it a crime to violate a custodian's right to life and personal freedom. Section 44 of the Code defines "injury" as "harm to the body, soul, repented, or belongings." Section 220 imposes a sentence on anyone who detains or holds a person for a dishonest or malicious motive; Sections 330 and 331 impose penalties on anyone who inflicts harm or physical damage on a person in order to extort evidence or information on the execution of an offence; Section 330 also specifically punishes abuse in accordance with the Indian Penal Code and According to Section 330, "Whoever knowingly causes harm for the extortion of a victim or someone involved in that person, for a confession or for any details that may contribute to the discovery of a crime or an error, or to restrain or restore any property or protection to the sufferer or any person"⁴⁴ Under section 331, who voluntarily does serious harm to any faith or knowledge or to bind any person interested in the victim to the restitution or reinstatement of any property or valuable protection, to the purpose of restricting that person or anyone interested in the person suffering, the terms and conditions of the victim, in the context of the extortion or restructuring of any propriety and valuable protection.

Articles 340 to 348 of the IPC include the list of places of unfair jurisdiction, contradiction and aggravation. Naturally, the jail itself is an unconstitutional factor – a leading element in the "false" word. Section 348 requires paying a person who wrongly ties a person to extort, etc. This chapter also penalizes bribes for details leading to violence or misidentification.



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As outlined above, in India there are appropriate legislation to protect human rights and to regulate custodian abuses, but the laws that justify the case of custodial viciousness in India are not properly applied. It should strictly observe the laws that are permitted. The one who breaks the law should be repelled severely.

INTERNATIONAL FRAMEWORK FOR COMBATING CUSTODIAL CRIMES

In avoiding custodial abuse, torture and safeguarding the courts, the United Nations has played a vital role. Since its establishment, the United Nations has established principles and practices through the adoption of numerous international instruments, including the Universal Declaration of Human Rights (UDHR 1948), International Covenant on Civil and Political Rights (ICCPR 1966), the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (CAT 1984), the United Nations Basic Principles for Justice for Victims of Crimes and Abuse of Power (UNBPVC 1985), the United Nations Optional Protocol of Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment (OPCAT 2006) and International Convention for the Protection of All persons from enforced Disappearances (ICPED 2007), the United Nations Standard Minimum Rules for Treatment of Offenders, 1955, United Nations Code of Conduct for Law Enforcement Officials, 1979, the United Nations Minimum Rules for Non-Custodial Measures (the Tokyo Rules), The UN Body Rules for the Security of All People from all Means or Imprisonment (Body Standards), the UN Fundamental Rules on use of force and weapons by Law Enforcement Officers 1991 (ICCPR 1966). The International Human and Political Rights Covenant (ICCPR1966).

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Custodial brutality, custodial deaths, and abuse of police and official power are not exclusive to this country, but are widespread and have piqued the international community's attention. The problem is widespread, and the challenge is virtually global. In nature, human rights, including universal rights, are supreme, eternal, sacred, and transcendental, and should be regarded as inalienable and unalienable in order to protect people's dignity. Human rights are recognized and asserted in order to acknowledge the need to protect and promote the inherent dignity of all members of the human family. Disregard for civil rights contributes to heinous acts that enrage humanity's conscience. According to the United Nations Charter, the rule of law shall protect everyone's civil rights in order to promote the development of good relations between nations. The citizens of the United Nations have reaffirmed their faith in basic human rights, human equality, and the Charter.

It does not include pain or suffering that is solely caused by, inherent in, or secondary to legal sanctions. According to Article 3, everyone has the right to life, liberty, and personal security. According to Article 5, no one shall be subjected to torture or cruel, inhuman, or abusive treatment or retribution. Article 11 states that a person charged with a criminal offence is presumed innocent unless proved guilty. It is meant to save him from any harsh treatment by the authorities involved in the case.

Despite religious resolutions, the violence continues unabated; additionally, every civilized nation expresses indignation and takes steps to eliminate it. Today, not only is intense physical pain a significant issue in all aspects of prison violence, but so is mental distress. Human suffering and trauma should not be covered by the law. Abuse of this kind is a flagrant violation of one's universal human rights.

Everyone is considered innocent unless proved guilty beyond a reasonable doubt, according to the cardinal rule of criminal law and national justice. From the time of his arrest until the end of his conviction, and even after that, every citizen has the right to proper legal representation and protection.

CONCLUSION AND SUGGESTIONS

Custodial violence must address two closures, namely clinical and preventive figures. There is no right to compensate custody survivors or family members for the death of the custodian. Solution is eligible under transparent law under Articles 32 and 226 of the Constitution in the case of payments to be authorized by the Supreme Court and the High Court. Safe administrators are exceptional in terms of providing sufficient compensation. Evacuation at the very source of custodial violence and prevention of these events should be carried out in conjunction with improvements and, as they are taken, preventive measures that may become workable:



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- Consistent police training facilities should be conducted and priority should be given to the protection of human rights. The police faculty should change its attitude and stance towards testing in order to change how they see and understand human rights.
- To prevent custodial abuse, higher authorities must constantly track and manage subordinate officials.
- In all cases of arrest and detention, strict adherence to the eleven prerequisites outlined in
- D.K. Basu case rules should be ensured.
- A simple and secure approach should be provided for the brief enlistment of first data files identifying all breaches. The e-FIR must be submitted.
- To make daily life easier, automation, video-capture, and cutting-edge document management should be strategically distinguishable from FIR monitors, inclusions, replacements, articulated witnesses, and so on.
- The separation of investigation from assistance for peace should be completed as soon as possible. A review by a competent body will be done promptly, and absolute authority to prosecute criminal prosecutions will be relied on. The CBI or the Human Rights Commission will investigate complaints of custodial violence against police officers and, if possible, take immediate action, followed by conviction.
- The Indian government intends to ratify the United Nations Convention on Torture as soon as possible.
- The district government would allow local non-governmental organizations (NGOs) and the media to prosecute, register, monitor, and rehabilitate victims of custody crimes. As part of their concurrent field studies, students in social work, law, and medical science will benefit from the development of an egalitarian community and a culture of human rights at the station level (two days in a week).

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