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## CUSTODIAL VIOLENCE

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### INTRODUCTION

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Custodial violence refers to violence in judicial or police custody. It includes death, rape and torture. Torture includes physical, physiological and sexual torture. The current situation of prisoners in India is abysmal. Between the year 2001 and 2018, the number of custodial deaths recorded in India was over 1,727. Many of these custodial deaths were attributed to suicide and death in hospitals during treatment and didn't receive proper justice. India currently does not have a strong anti-torture legislation against Custodial Violence. However, there are some provisions against it in the Constitution of India, Indian Evidence Act 1872, Indian Penal Code 1860, Criminal Procedure Code and some landmark judgements made in the courts of India. Custodial Violence recently got into limelight again after brutal killing of Jayaraj and Felix in custody. Custodial Violence includes several types of violence's such as Police beats an accused in order to get confession or even includes encounter in which Police kills an accused when it is trying to flee. All these provisions often get misused and is outside the purview of powers of Police.

There is a need for better custodial management in India. Several historic landmark judgements have taken place in India against Custodial Violence such as

- Shri DK Basu, Ashok K. Johri v. State of West Bengal, State of U.P 1996
- Joginder Kumar v. State of UP 1994
- Nilabati Behera v. State of Orissa 1993
- State of MP v. Shyamsundar Trivedi 1995

The Supreme Court has issued directives several times and asked states to take action over custodial violence and punish the guilty officers. Supreme Court has presented certain guidelines that state must follow while treating prisoners but to Supreme Court's utter disappointment, Custodial violence cases still occur almost every single day Therefore, in this research paper, I'll be talking about the existing laws in India against Custodial Violence and suggest a strong legislation catered particularly against Custodial Violence which is the need of the hour in India.

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## HISTORY OF CUSTODIAL VIOLENCE

Custodial violence is not a new phenomenon in India. It has been prevalent in India and the World since ages. Even when ancient India history is taken into account, Kautilya in his famous book Arthshastra depicts the custodial violence used on prisoners back then. Tortures such as burning and cutting of limbs, tearing a person apart using wild animals such as tigers and elephants, mutilation were practiced on prisoners as a form of punishment. This phenomenon especially experienced a rise in the post Gupta Period.

Sharia laws which are still widely practiced in many countries is a prominent example when it comes to Custodial Violence. Muslim Criminal jurisprudence follows the rule of tooth for a tooth. In some places, for a crime as simple as theft, a thief's hands are cut and they are handicapped for life. Under the Mughals, torturing in custody to coerce confession was common. In our known history, there were eras of peace as well in India. Buddhist Era was especially known for its humanitarian assistance to prisoners particularly to women and the breadwinners of the families. Gupta Period also provided fair trials to all prisoners and in case of evidence not being sufficient, the prisoners were freed and were allowed to return to their normal routines.

It would not be possible to talk about Custodial Violence in India and not mention the infamous British Raj. Men, women and even children were arrested by the government and tortured in prisons, sometimes, for crimes they did not commit in the first place. The torture faced by the masses was so horrific that many confessed falsely to the crimes and chose spending prison time instead of getting tortured. Some common methods of torturing included: naked lying on the ice, getting beaten up in closed quarters, humiliation at a public square, and excess physical work.

The sad reality of today is that in India, we are still using these laws made by the British Raj. The laws created by them were made for their own benefit and were against the common people of India. The Indian Penal Code 1860 widely used today was written during the British era as well. The Prison Act (1894)<sup>2</sup> was passed and gave vast powers to police officials to punish criminals and sometimes even innocents. The British primarily wanted to rule India by suppressing the masses and this Prison Act made the officials invincible when compared to the common man.

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<sup>2</sup> The Prison Act 1894.

This might be one of the few reasons Police and Judiciary became infamous between the masses during that period and several revolutions took place against it.

Recently, Terrorist and Disruptive Activities (Prevention) Act, 1987, was also found a possible way for police officers to misuse their powers and torture prisoners. It withdrew the safeguards provided in article 22<sup>3</sup> of the Indian constitution for those suspected of terrorist acts. Section 25 and 26 of Indian Evidence Act<sup>4</sup>, a confession made to a police officer is not admissible in a court of law. Section 15 of TADA<sup>5</sup> discarded this and made confessions to a police officer of the Superintendent and above admissible in the courts. The Act lapsed in 1995 but another Act, Prevention of Terrorism Act was passed in 2000. It has a similar provision like Section 15 of TADA in Section 32 of the Act<sup>6</sup>. The section was criticised by the public and NHRC admitted that the section can be misused and is inconsistent with Article 14(3) of the International Covenant on Civil and Political Rights. (ICCPR)<sup>7</sup>

### INTERNATIONAL FRAMEWORK

India has signed several treaties related to anti-torture laws and against custodial violence. Some of them are as follows:

#### **Universal Declaration of Human Rights, 1948:**

Article 5 of the Universal Declaration of Human Rights states that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*<sup>8</sup> India is a signatory state to this Universal declaration. Our constitution is heavily influenced by this declaration as well.

**Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1948)** includes the definition of torture and in its description is inclusive with respect to torture done by state machinery on the prisoner while in custody<sup>9</sup>. One of the primary reasons to adopt such a decision was that after world war 2, the world was still healing. There was a sudden

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<sup>3</sup> Constitution of India 1950, art 22.

<sup>4</sup> Indian Evidence Act 1872, s 25, s 26.

<sup>5</sup> Terrorist and Disruptive Activities (Prevention) Act 1987, s 15.

<sup>6</sup> Prevention of Terrorism Act 2000, s 32.

<sup>7</sup> International Covenant on Civil and Political Rights. (ICCPR) 1966, art 14(3).

<sup>8</sup> Universal Declaration of Human Rights 1948, art 5.

<sup>9</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1948.

hike in torture done on the masses by the public officials all over the world. To curb all these heinous activities, United Nations knew it was imperative to bring a ruling against it.

**International Covenant on Civil and Political Rights (1966):**

ICCPR was adopted and opened for signature in December 1966. India is a signatory in ICCPR as well. Just like Article 5 of UDHR (1948) , according to Article 7 of ICCPR, *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.* Article 14(3) also states that an accused cannot be coerced to testify against himself or to confess guilt<sup>10</sup>. **Tokyo Rules (1990):**<sup>11</sup>

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United Nations Standard Minimum Rules for non-custodial measures is also known as Tokyo Rules. It was adopted by the UNGA in 1990. They provide fundamental principles to encourage the use of non-custodial procedures, as well as minimum safeguards for those facing alternatives to jail. It advocates for more community involvement in the criminal justice system, as well as promoting a sense of social responsibility among criminals. It urges member nations to establish non-custodial methods and alternatives to imprisonment, as well as to streamline criminal justice policies. The guidelines also attempt to promote social fairness and address offenders' rehabilitation requirements. The guidelines discourage pre-trial imprisonment and place a greater emphasis on the investigation into the suspected crime. A variety of non-custodial measures should be available to the court authority. Verbal punishments (admonition, rebuke, and warning), conditional discharge, status penalties, economic sanctions, and monetary penalties, confiscation, suspended or deferred sentences, home arrest, and other alternatives are specified in the rules.

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<sup>10</sup> International Covenant on Civil and Political Rights. (ICCPR) 1966, art 14(3).

<sup>11</sup> United Nations Standard Minimum Rules for Non-custodial Measures, 1990.

**LEGISLATIVE ACTION IN INDIA****Articles against Custodial Violence in India:****Article 20(1):**

Article 20(1) states that no person shall be subjected to any greater penalty than which might have been inflicted under the law in force at the time of the commission of an offense<sup>12</sup>. This makes sure that no person is inflicted a greater injury than required. Since custodial violence is not a formal legal punishment in India, a person cannot be punished by so in custody.

**Article 20(3):**

Constitution of India provides relief to accused people<sup>16</sup>. It states that a person cannot be compelled to be a witness against himself. This provides a safeguard against torture in custody.

Since a person cannot be coerced for testifying against himself, it doesn't make sense for police to torture them and get a confession out. Compelled means any information obtained by pressure whether mental or physical. If pressure is applied, it becomes compelled confession and a violation of Article 20(3).

**Article 21:**

Article 21 guarantees a person with right to life and liberty except according to procedure of law<sup>17</sup>. It doesn't specifically say anything against torture but it's a given that right to life includes safeguards against custodial torture.

**Article 22(1):**

Right to seek the grounds of arrest and the right to consult a legal practitioner of one's choice comes under the ambit of Article 22(1)<sup>13</sup>. This ensures that no arrests out of spite are made and then used to one's advantage leading to custodial violence.

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<sup>12</sup> Constitution of India 1950, art 20(1). <sup>16</sup>

Constitution of India 1950, art 20(3). <sup>17</sup>

Constitution of India 1950, art 21.

<sup>13</sup> Constitution of India 1950, art 22(1).

**Article 22(2):**

Article 22(2) ensures that a quick trial is provided to an accused<sup>14</sup>. All arrested people have to be produced before a magistrate within a period of twenty-four hours. Further detention needs approval and hence acts as a safeguard in case of any misuse of power. Bail can be provided and grievances can be raised by the arrested person.

**Indian Evidence Act (1872)**

- **Section 24** of the Indian Evidence Act 1872 makes all confessions made under inducement, threat, or promise as inadmissible<sup>20</sup>. It gives the accused the right to be silent and not make a confession against his will. If such an evidence is made admissible in court, torturing will also be considered okay.
- **Sections 25 and 26** of the **Indian Evidence Act of 1872**<sup>15</sup> provide the accused with protections. No confession made to a police officer can be used to prove any offence against him, according to **Section 25**. All confessions made while in detention are inadmissible unless they are made in the presence of a Magistrate, according to **Section 26**. **Section 27** of the act<sup>16</sup>, on the other hand, makes an exemption to **Section 25** in that a statement made in custody may be acceptable if it leads to the discovery of a new fact.

**Code of Criminal Procedure, 1973**

**Section 49:** An accused in custody should not be subject to more restraint than necessary to prevent escape.<sup>17</sup>

**Section 50A:** Necessary to inform a person related to the detained by the police after arrest<sup>18</sup>.

**Section 55A:** This section makes it compulsory for the police officer in charge to take care of health and safety of the accused.<sup>19</sup>

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<sup>14</sup> Constitution of India 1950, art 22 (2). <sup>20</sup>  
Indian Evidence Act 1872, s 24.

<sup>15</sup> Indian Evidence Act 1872, s 25, s 26.

<sup>16</sup> Indian Evidence Act 1872, s 27

<sup>17</sup> Code of Criminal Procedure 1973, s 49.

<sup>18</sup> Code of Criminal Procedure 1973, s 50(A)

<sup>19</sup> Code of Criminal Procedure 1973, s 55A

**Section 163:** This section<sup>20</sup> prohibits the officers from compelling any accused to make a confession under Section 24 of the Indian Evidence Act<sup>21</sup>.

**Section 164(4):** This section provides for a medium of recording of confessions in a suitable way and endorsement of the confession by a magistrate vouching that it has been made voluntarily.<sup>22</sup>

### **Indian Penal Code, 1860**

#### **Section 348:**

This section<sup>23</sup> lays down provision related to wrongful confinement and bans any activity exhorting confessions and information. A person can also be punished for up to 3 years and fined for such an act.

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<sup>20</sup> Code of Criminal Procedure, s 163.

<sup>21</sup> Indian Evidence Act 1872, s 24.

<sup>22</sup> Code of Criminal Procedure, s 164(4).

<sup>23</sup> Indian Penal Code 1860, s 348.

## JUDGEMENTS

### **D.K. Basu v. State of West Bengal (1997)<sup>24</sup>**

This case holds immense power when talking about laws against custodial violence. The Supreme court kept in mind that India was a signatory to UN Convention against Custodial Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984). A letter was sent in 1986 talking about the recent custodial deaths in West Bengal. The rights then formed are treated as the 'DK Basu rights'. These rights have to be informed to the person getting detained during the time of the arrest. The Supreme Court emphasised on remedy and ordered monetary compensation for the aggrieved party. Supreme Court also set up a Human Rights Courts under Section 30 of The Protection of Human Rights Act(1993)<sup>25</sup>. It was also ordered to set up of CCTVs in prisons. Surprise checks by non-officials in prisons and police station were also imposed.

### **Shyamsundar Trivedi v. State of MP, 1995<sup>26</sup>**

This horrible incident took place on 13-14 October 1981. The accused were mistreated and custodial violence took another victim : Nathu Banjara. The event was loudly protested against and the crime was acknowledged by the Courts. Nathu Banjara was arrested and brought to the police station in suspect of a murder case. He was interrogated and tortured in order to exhort a confession out of him. Shyamsundar Trivedi was the inspector in charge on the scene. Nathu succumbed to injuries and died in custody. This fuelled the general public in the village who were already keeping a watch on the police station. The post mortem revealed that death was caused due to external injuries. This confirmed that police officers were behind the death of Nathu Banjara. The court realised that in instances of direct evidence being unavailable, it becomes next to impossible to hold a police officer accountable for such a deed. The court suggested the insertion of Section 114-B into the Indian Evidence Act 1872<sup>27</sup>. Section 114-B

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<sup>24</sup> *Shri DK Bash, Ashok K Johri v State of West Bengal, State of UP* [1996] SCC 416.

<sup>25</sup> Protection of Human Rights Act 1993, s 30.

<sup>26</sup> *State of MP v Shyamsundar Trivedi* [1995] SCC 262.

<sup>27</sup> Indian Evidence Act 1872, s 114-B.

states that if an injury is caused during custody, the burden of proof that a police officer was not behind it would be laid on the police officer in charge. The same recommendation was made by Law Commission in its 113<sup>th</sup> and 152<sup>nd</sup> report.

### **Joginder Kumar vs State of U.P.**

The petitioner in this case was illegally detained for 5 days. When inquired about it, the officials in charge denied so and stated that the petitioner was not detained at all and was cooperating them voluntarily in an abduction case. The court emphasised that if a person is detained there must be a proper reason for detaining them. An arrest cannot be made merely on the grounds of suspicion. Hence, several guidelines were issued that were to be followed by officials during the time of arrest. The person getting arrested has to be informed about their rights during the arrest.

They have the right to inform any friend or relative about arrest and their location of detention. There will also be a diary maintained by the police officials where entries related to the person informed will be there. The duty to ensure that the principles are being followed has been given to the magistrate before whom the arrested person will be brought.

### **Nilabati Behra v. State of Orissa:**

Nilabati Behra v. State of Orissa<sup>28</sup> was a landmark judgement and provided for compensation against custodial deaths. This was the first time such a thing was seen in a court of law. The mother of the deceased filed a complaint and asked for compensation as her son's death. She stated that his death was a grave violation of Article 21 of the Indian Constitution. The Supreme court agreed and showed remorse for the horrendous event that took place. The woman was awarded 1.5 lakhs as compensation.

Supreme Court has issued guidelines against Custodial Violence again and again. Several guidelines against handcuffing, custodial crime and victim compensation have been covered in other judgements. It has also implied that a particular legislation is needed against Custodial Violence.

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<sup>28</sup> *Smt Nilabati Behera Alias Lalit v State of Orissa And Ors* [1993] AIR 1960.

## SUGGESTIONS

It is true there are already some provisions against torture which can be related to custodial torture as well but many feel that it is not enough today seeing the number of cases for custodial violence rising everyday. Prevention of Torture Bill was first introduced in the parliament in 2010. The bill later lapsed due to a change in government.

The bill proposes punishment for torture done by officials on the arrested individuals. The bill defines torture as grievous hurt, or which causes danger to life, limb and hazards on health. It also specifies that grievances against these torture have to be filed within six months of the case.

This law is the need of the hour and should be brought in the parliament as soon as possible.

However, there are some discrepancies in the law. I'd like these few suggestions to be taken into consideration before passing of the bill.

- The definition of torture given is quite narrow and doesn't include torture such as slapping, punching, choking, gagging and other such horrific measures are not included in it. Officials can torture an individual and still get away with it as this kind of torture does not come under the purview of the law.
- The time limit specified in the case is arbitrary. Judging by the number of underreported cases already in India, it's not righteous to expect marginalized communities to file a case within such a short period of time. There can be several other reasons of not filing a case within six months. Therefore, such a provision should not be kept in the bill. An extended deadline version should also be considered.

It's high time that a law specific to conditions of custodial torture prevalent in India come to reality and provide safeguarding provisions to the detained. There also needs to be some structural changes internally in the police.

- Police personnel should get increased training pertaining especially to human rights.
- Higher authorities must look after subordinate authorities and keep a check on them.
- D.K. Basu rights should be followed in any given circumstances.
- The government should ratify the United Nations Convention against Torture.
- The district governments should allow NGOs to register, monitor and rehabilitate victims of custodial crimes.

## CONCLUSION

Custodial violence and killings are not a new occurrence. It has been in our society for millennia. Despite various measures in recent years, torture and inhumane treatment remain widespread in India, depriving thousands of people of their basic dignity. Custodial torture has grown so frequent in recent years that not just the police and bureaucracy, but also the general public, accept it as a standard police interrogation practise. As a result, news of such heinous behaviour only generates a brief shock in society.

When a person dies in custody, there is a public outcry that either fades away with time or is at least subdued by the formation of an inquiring committee. In all countries, the law allows the police to use force in specific situations. This authority is essential to the organization's function and cannot be questioned. It is a legal requirement for police officers. I understand that police officers operate under a great deal of stress and that other distractions exist, but the police have no authority to inflict brutality on a vulnerable individual in their possession while disobeying the 'canons of law.'

In a modern society like India, the people, not so much the police, are the absolute masters, as they hold the sovereign authority. The police are essentially representatives of the administration, which is primarily responsible to the people. Murderers, petty criminals, chronic offenders, and terrorists must all be protected by the police in order for society to be a safe place to live. Apprehension of a gang of dacoits, arrest of an accused who aggressively resists arrest, and so on are examples of instances in which police must use force.

On the other hand, Adoption of Human Rights in the laws is pertinent for any country. India has signed several treaties that are against torture, however, India still has not ratified the UN Convention against Torture<sup>29</sup>. UN Convention against Torture requires the member country to form an anti-torture law. There have been times where an extradition request by India has been

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<sup>29</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1948.

denied on the grounds of human rights violation. Hence, an anti-torture law is required in India as a country cannot function morally right without human rights law in place. Supreme Court has also pointed that such a law would be of national interest.