
SILENCED IN CUSTODY: CUSTODIAL RAPE BY POLICE IN INDIA

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ABSTRACT

The general responsibilities of police involve maintaining law and order, protecting the lives and property of people, and upholding the law. But what happens when these authorities themselves are often involved in violating the law and endangering the lives of the people they are supposed to protect? One such atrocity committed by police or state authorities is the custodial rape of women, which is an under-addressed crime persisting in society.

The paper aims to examine the existing legal and institutional frameworks in place in India governing custodial rape and how these institutional and legal frameworks have evolved over time. A significant part of the research involves case law analysis, examining how courts at different levels have approached incidents of custodial rape and the legal reasoning applied in such cases. To substantiate its arguments, the study incorporates statistical data from NCRB reports, parliamentary debates, and insights from investigative journalism.

It further delves into analyzing the incidence and patterns of the crime and the systematic and institutional factors that contribute to impunity for it. At last, the paper proposes certain recommendations for legal and policy reforms aimed at preventing further cases of custodial rape, ensuring accountability, and providing effective remedies for the victims.

Keywords: Custodial rape, police, women, crime, courts

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Introduction

In a country where crime against women records 51 FIRs every hour², women are not safe anywhere. Even under the protection of the authority whose general responsibility is to protect the lives of the people, women are gravely abused. According to the National Crime Records Bureau (NCRB), 445,256 cases of crime against women were recorded in 2022. While we cannot ignore the fact that many such cases must not have even been able to make their way into the reports. Out of these, 275 cases of custodial rape were registered between 2017 to 2022. The crime of custodial violence has always remained underreported and inadequately addressed. This is because of factors such as the stigma attached to sexual violence, the power imbalance between the victim and the offender, and the institutional tendency to shield officials from accountability.

Rape, the word that has destroyed the lives of many women, is one of the most heinous crimes committed against a woman. It not only abuses the physical body of women but also leaves a lifetime of trauma behind it. According to NCRB reports, 31,516 cases of rape³ were filed in 2022 alone. The horrific data shows that an average of 87 rapes per day were committed across the country. This data not only unveils the dark side of the country's condition but also shows how many women are being suffocated by such an evil on a daily basis. Indian criminal law defines rape under section 63 of the Bharatiya Nyaya Sanhita (BNS) 2023⁴ and punishes the offense under section 64 of BNS. Further sections classify rape done by different authorities and on different ages, and the punishment for each varies.

Custodial rape, as the name suggests, refers to the rape of a woman by a law enforcement authority when the woman is in custody. Custody simply means when a person is kept under someone's protection. Though custody is not defined anywhere in Indian law, the meaning is inferred. The court has defined custody from time to time in relation to the concerned sections. There are two types of custody: police custody and judicial custody. Police custody is when a person is taken into custody with regard to the investigation of a crime. While judicial custody of a person is followed when the person is produced before the magistrate, the magistrate decides whether the person should be taken into judicial custody or shall go back to police

² See National Crime Records Bureau, Crime in India 2022, at page no. 211, (2023)

<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

³ See National Crime Records Bureau, Crime in India 2022, at page no. 218, (2023)

<https://www.ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/1701607577CrimeinIndia2022Book1.pdf>

⁴ See Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 63-64, Gazette of India, Dec. 25, 2023.

custody for the purpose of further investigation. In both situations, when a person is placed in the custody of a state authority, the custodial officer exercises significant control over the physical liberty, bodily autonomy, and overall control of that individual.

This imbalance of power makes detainees exceedingly vulnerable to the abuse of authorities like police personnel, members of the armed forces, jail staff, staff of remand homes, or any other police servant. The official can engage in a range of human rights violations, varying from verbal and physical assault to torture, which often leads to custodial death and sexual violence, including rape. What makes this situation particularly alarming is the fact that these state officials act under the legal cover and operational immunity often granted by institutional hierarchies, statutory protections like AFSPA⁵, and the longstanding culture of impunity within the criminal justice system. Custodial rape is not a modern phenomenon but a deeply rooted, systematic crime committed by police personnel and the army for decades. The women who fall prey to these odious crimes are particularly those from marginalized backgrounds, such as Dalits, tribal people, migrants, and the poor. Those who are often chosen because of their lack of social, economic, and political resources to challenge the state power or to seek legal recourse.

Moreover, custodial rape is not always directed at an individual for personal or immediate reasons. Sometimes, it is a systematically employed tool to intimidate, subjugate, and exert control over entire communities, especially in regions marked by insurgency, caste conflict, communal tensions, or political unrest. Such heinous acts are committed to send a message to instill fear, silence dissent, and remind marginalized groups of their subordinate place in a power-driven hierarchy maintained through coercion and violence. The women become an example of what the officers are capable of doing in case of non-compliance.

This misuse of state power fundamentally erodes public trust in law enforcement institutions. When those responsible for upholding the law become its violators, the very fabric of a democratic and rights-based society is threatened. Furthermore, even when victims exhibit the courage to seek legal redress, it remains essential to examine how legal institutions adjudicate such cases and to what extent the existing laws prove effective in delivering justice.

⁵ See Armed Forces (Special Powers) Act, No. 28 of 1958, Gazette of India, Sept. 11, 1958.

Custodial Rape

The heinous crime of custodial rape is so grievous in nature that it does not only mark the sexual assault but also inflicts extreme physical and psychological brutality by the police. A woman placed under police custody would ordinarily presume that she is under lawful protection and would not anticipate any harm while in the custody of law enforcement authorities. Paradoxically, the institution designated to ensure her safety frequently exercises its authority arbitrarily, leading to violations of the very rights it is mandated to protect.

How custodial rape is different from rape or why there is a separate provision for custodial rape when rape is already a punishable offense under Indian law.

Custodial rape has the same elements as rape, but it still differs from rape in several aspects. Rape is a profoundly heinous crime that not only exploits a woman's physical body but also leaves invisible scars and psychological trauma on her for the rest of her life. And when the rape is committed by the person who has the responsibility of protecting us from such atrocities, it leaves a question mark on our entire system. Rape done by a person who has exclusive authority over people, who has the power of a policeman, gives them a coercive position over the victim. When a woman is raped in custody, she has fewer chances of resistance and to fight for herself. This situation was later used by the offender to show her 'consent' to the court. The fact that the crime was committed at a place where the authority lies within the hands of the offender means the situation and the evidence are prone to manipulation, which later denies the serving of justice to the victim. "Custodial settings provide unique opportunities for abuse, with state agents often using their power to force or coerce sexual access," said Population Foundation of India executive director Poonam Muttreja. She further said, "There are instances where women taken into custody for their protection or due to their vulnerable status, such as victims of trafficking or domestic violence, are subjected to sexual violence, reflecting a misuse of power under the guise of state protection."⁶ Sometimes these crimes are aimed at intimidating a certain section or group of people. Through rape they set an example of their power and how they can abuse it to destroy their lives. According to a Human Rights Watch

⁶ See Population Foundation of India, Statement of Executive Director Poonam Muttreja, as cited in The Economic Times, As many as 275 cases of rape in custody registered from 2017-22: NCRB, Feb 25, 2024, https://economictimes.indiatimes.com/news/india/as-many-as-275-cases-of-rape-in-custody-registered-from-2017-22-ncrb/articleshow/107981586.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

report published in 1994⁷, rape is used as a tool to target women who they suspect are supporting the militants. In areas like Jammu and Kashmir and northeastern states like Manipur, Nagaland, and Arunachal Pradesh, where full military control is in the hands of AFSPA⁸, cases of violence by the army are in the news every other day. The army misuses its power to create fear among the people. More specifically, the crime of rape by Indian security forces is used as a tool to punish the communities that support militants and set it as an example to create fear among people. And this vile crime most often occurs during search operations where men are taken out for identification for house searches and women are often left defenseless. In such cases, women are reluctant to file cases, as there is always a threat of retribution from both the security forces and the militants. Above this, acts like the Public Safety Act (PSA)⁹ of 1978, which is enforceable in the Union Territory of Jammu and Kashmir by AFSPA, under which a person can be detained without formal charges and does not have the right to access any lawyer to represent them or to move a bail application. These provisions are often misused to hide cases of sexual violence.

Evolution of legal provisions regarding custodial rape

The issue of custodial rape in India caught attention at the national level in 1972, in the infamous Mathura Rape case¹⁰. In this case a young tribal girl named Mathura was allegedly raped by two policemen on the premises of a police station in Maharashtra. The sessions court acquitted the accused by saying that there was not enough evidence to prove that there was no consent and the crime of rape took place. As is evident from this case, it is very difficult to provide evidence of the crime when the rape has been committed in the authority's premises, where it is subject to manipulation.

The court also emphasized on the difference between 'sexual intercourse' and 'rape.' Whereas the case reached the high court, the court took note of the findings of the case and observed that there is a difference between 'consent' and "passive submission." It further said, "If these circumstances are taken into consideration, it would be clear that the initiative for sexual intercourse must have come from the accused or any of them, and she had to submit without any resistance. Mere passive or helpless surrender of the body and its resignation to the other's

⁷ See Human Rights Watch, *Rape in Kashmir: A Crime of War* (1993), <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF>

⁸ See Armed Forces (Special Powers) Act, No. 28 of 1958, Gazette of India, Sept. 11, 1958.

⁹ See Jammu and Kashmir Public Safety Act, No. 6 of 1978, § 8, Gazette of Jammu & Kashmir, Apr. 20, 1978.

¹⁰ See *Tukaram v. State of Maharashtra*, 1979 AIR 185

lust induced by threats or fear cannot be equated with desire or will, nor can it furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition. On the other hand, taking advantage of the fact that Mathura was involved in a complaint filed by her brother and that she was alone at the police station at the dead hour of night, it is more probable that the initiative for satisfying the sexual desire must have proceeded from the accused and that victim Mathura must not have been a willing party to the act of sexual intercourse. Her subsequent conduct in making a statement immediately not only to her relatives but also to the members of the crowd left no manner of doubt that she was subjected to forcible sexual intercourse¹¹.” But when this matter reached the Supreme Court, the court again emphasized the lack of evidence and the possibility of the consent given by the girl based on the circumstances and reversed the conviction given by the High Court. This case was set up as a precedent to give the accused the benefit of a reasonable doubt. The case has been referred to multiple times to prove that no injuries or visible protest by the victim suggest consensual sex. “The act of submitting the body to the accused without resistance amounts to passive submission. According to him, the prosecutrix had not protested to the accused; hence, it amounts to passive consent. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Tukaram v. State of Maharashtra*¹², augmented by the accused counsel in the case of *Dinkar v. State of Maharashtra*¹³.

Such precedent made us question how a woman who is in custody, a situation where the offender overpowers her in both authority and power and forces her to submit peacefully, should act. In such cases, the women are left with no option but to submit themselves in fear of grievous consequences. Which led to difficulty in proving whether the submission was under the influence and was coercive in nature. Which eventually leads to such offenders being acquitted unharmed.

The case of *Tukaram and Ors. vs. The State of Maharashtra* was widely criticised by the people. Many activists and lawyers protested and addressed that there is a need to bring change to the existing laws. There were many women's groups that were formed to fight against the decision and to bring reforms to the country.

¹¹ Id.

¹² Id.

¹³ *Dinkar vs. State of Maharashtra* (22.09.2020 - BOMHC) MANU/MH/1368/2020

- *The Criminal Law (Amendment) Act 1983*

This resulted in the Criminal Law (Amendment) Act 1983¹⁴, which inserted IPC Sec. 376(2), now given under Section 64 of the Bharatiya Nyaya Sanhita¹⁵. This section criminalized custodial rape and made it punishable to target this abuse of power, prescribing a minimum 10-year prison term (extendable to life) for custodial rape—harsher than the 7-year minimum for ordinary rape. Also, section 114(A) of the Evidence Act¹⁶ was introduced, which said that if the victim says that consent was not given by her, then the court shall presume that consent was not given. It also shifted the burden of proof from the accuser to the accused. Which means that the accused has to prove that if the victim says that the rape has been committed, which means there was no consent, then the onus of proof that consent was given is on the shoulders of the accused. This provision helped the victim, especially in the case of custodial rape. As in the case of custodial rape, the public officer has the power to manipulate or to destroy the evidence. This amendment also established provisions for in-camera trials and the prohibition of disclosure of the victim's identity. This provision was introduced while keeping in mind the huge taboo in society that shames the victim of a sexual offence instead of the offender. Disclosure of a victim's identity often left their lives in tatters.

As seen in the case of the Pararia mass rape (1988)¹⁷, several women of Pararia village were gang-raped by a group of the Bihar Police Force. The women were assaulted and raped by the police in the middle of the night. When this case was reported in the court, the accused police officers were all acquitted on the grounds of insufficient evidence. In this case, even the court questioned the character of the woman. The trial court said, "It cannot be ruled out that these ladies might speak falsehood to get a sum of Rs 1,000, which was a huge sum for them." "Radhia Devi has stated that she was thrown on the ground on her back. Two chowkidars caught her legs and hands, and three policemen committed rape with (sic) her. It was argued by the defense that such a posture at the time of rape was inconceivable I also find much weight in the argument." The court further emphasized, "She did not answer questions properly. Sometimes she began crying. Sometimes she stated that she would not speak any further. From all these facts, it appears that her identity as Dariya Devi is still questionable."¹⁸ Such a

¹⁴ The Criminal Law (Amendment) Act, No. 43 of 1983, § 3, India Code (1983).

¹⁵ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 64, India Code (2023).

¹⁶ The Indian Evidence (Amendment) Act, No. 43 of 1983, § 114A, India Code (1983).

¹⁷ State Of Bihar (Now Jharkhand) vs Ajit Kumar And Ors. on 3 January, 2008, 2008(1)JCR604(JHR)

¹⁸ See India Today, Pararia mass rape: After it shocked India, judgement doubts character of the women, May 31, 1989

statement from the court itself is proof of how the victim's character has always been judged negatively. When the court itself, which should be questioning the accused, is commenting on the victim's character on unreasonable grounds, then how can one convince society otherwise?

In a similar case of *The State of Punjab vs. Gurmit Singh & Ors.* on 16 January 1996¹⁹, the trial court observed, "Since the width of the speculum was about two fingers, the possibility that the prosecutrix was habituated to sexual intercourse could not be ruled out. The trial court observed that the prosecutrix was "flighting her imagination in order to rope in the accused persons" and that implicit reliance could not be placed on the testimony of such a girl." Even in this case, the reasoning given by the court for not believing an Xth-class minor village girl was not reasonable. The trial court failed to look at the case from the victim's perspective, where the minor was threatened by 3 men to be killed if she raised an alarm. Further, "The trial court was of the opinion that it was a 'false' case and that the accused had been implicated on account of enmity." When the case reached the Supreme Court, the court held that the trial court was in error. The Supreme Court observed that, "What has shocked our judicial conscience all the more is the inference drawn by the court, based on no evidence and not even on a denied suggestion, to the effect: "The more probable it is that (prosecutrix) was a girl of loose character. She wanted to dupe her parents into thinking she resided for one night at the house of her maternal uncle, but for reasons best known to her, she did not do so, and she preferred to give company to some person. We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack the sobriety expected of a judge. Such stigmas have the potential of not only discouraging even an otherwise reluctant victim of sexual assault from bringing forth a complaint for the trial of criminals, thereby making society suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings, which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole, where the victim of crime is discouraged, the criminal encouraged, and in turn crime gets rewarded! Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference, like the victim being a girl of "loose moral character," is permissible to be drawn from that circumstance alone. Even if the prosecutrix,

<https://www.indiatoday.in/magazine/special-report/story/19890531-pararia-mass-rape-after-it-shocked-india-judgement-doubts-character-of-the-women-768535-2013-02-19>

¹⁹ *The State Of Punjab vs Gurmit Singh & Ors* on 16 January, 1996, 1996 AIR 1393

in a given case, has been promiscuous in her sexual behavior earlier, she has a right to refuse to submit herself to sexual intercourse with anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma, like the one cast in the present case, should be cast against such a witness by the courts, for after all, it is the accused and not the victim of a sex crime who is on trial in the court.” The judgment by the Supreme Court highlighting the wrong approach taken by the court is a welcome step towards a victim-centric perspective. The court not only observed that the trial court was in error but also clearly criticized the remarks that were made on the character of the victim.

- ***The Indian Evidence (Amendment) Act, 2002***

This practice of defaming a rape victim’s character came under control after the Indian Evidence (Amendment) Act, 2002. The amendment specifies, "Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character."²⁰ Previously, this section allowed advocates to cross-examine the victims about their personal and sexual lives in the court. Such an examination was done to prove the character of the victim as immoral in the cases of rape. But with the Evidence Act amendment in 2002²¹, it omitted section 155(4) of the Indian Evidence Act, 1872, which stated, “When a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.”²² This amendment reduces the cases where advocates used to attack the characters of the rape victim to make their case strong. This provision was one of the reasons why rape victims avoided coming forward in court. No woman wanted her character to be shamed in a court and to be labeled as a woman of no morals.

- ***The Code of Criminal Procedure (Amendment) Bill, 2005***

Later in 2005, a new amendment bill was presented in the parliament with the name of the Code of Criminal Procedure (Amendment) Bill, 2005²³. The bill brought certain changes in the criminal code regarding sections 53(A), 164(A), and 176, which were concerned with the

²⁰ Indian Evidence Act, No. 1 of 1872, § 146 (as amended by Indian Evidence (Amendment) Act, 2002) (India).

²¹ Indian Evidence (Amendment) Act, 2002, No. 4, Acts of Parliament, 2002 (India).

²² Indian Evidence Act, No. 1 of 1872, § 155(4) (prior to repeal by Indian Evidence (Amendment) Act, 2002) (India).

²³ Code of Criminal Procedure (Amendment) Bill, 2005, Bill No. 53 of 2005, § 53A, 164A, 176, India.

offense of rape.

Section 53A²⁴ was added to the CrPC, which mandated the examination of a person accused of rape and described the procedure and requirements to be taken care of.

Section 164A²⁵ of the CrPC dealt with the medical examination of the victim of rape. The section specifies the urgent need for medical examination of the victim with her consent. Now, section 184 of the Bharatiya Nagrik Suraksha Sanhita, 2023,²⁶ deals with the same.

Both sections are about securing immediate medical forensic evidence from both the accused and the victim. In cases of custodial rape, it curtails the attempts made by the accused police officer or any other official to delay or tamper with the evidence. Further amendment was made under section 176 of the principal act. The section added 1(A)²⁷, where (a) any person dies or disappears or (b) rape is alleged to have been committed on any woman metropolitan magistrate, an inquiry shall be held by the judicial magistrate or the metropolitan magistrate in addition to the inquiry held by the police. This amends the previous provision, which gave power to the magistrate to inquire only in the case of custodial death. But after the amendment act, the magistrate shall conduct an independent inquiry also in the cases of custodial rape. Before this, the matter of custodial rape was handled internally by the police, which created a huge loophole for bias and unfair practices. It was easier for the police to hide the traces of evidence or to intimidate witnesses. But after the amendment, the provision of independent inquiry can safeguard the procedure for the investigation of the matters of custodial rape.

- *The Bharatiya Nyaya Sanhita, 2023*

The offense of custodial rape is now directly punishable in Section 64(2)²⁸ of the Bharatiya Nyaya Sanhita, 2023. The concerned section punishes whoever commits rape under any of the following aggravated circumstances shall be punished with rigorous imprisonment of not less than ten years, extendable to life imprisonment (meaning the remainder of natural life), and shall also be liable to a fine:

²⁴ Code of Criminal Procedure, No. 2 of 1974, § 53A, India Code (1974).

²⁵ Code of Criminal Procedure, No. 2 of 1974, § 164A, India Code (1974).

²⁶ Bharatiya Nagrik Suraksha Sanhita, No. 45 of 2023, § 184, India Code (2023).

²⁷ Code of Criminal Procedure, No. 2 of 1974, § 176(1A), India Code (1974).

²⁸ Bharatiya Nyaya Sanhita, No. 46 of 2023, § 64(2), India Code (2023).

- Being a police officer within their jurisdiction, at police station premises, or with a woman in police custody.
- Being a public servant, on a woman in custody.
- Being a member of the armed forces in an area under deployment.
- Being on the management or staff of a jail, remand home, custody home, women's or children's institution, or a hospital.
- Being a relative, guardian, teacher, or person in a position of trust or authority.
- Committing rape during communal or sectarian violence.
- Committing rape on a pregnant woman, a woman incapable of consent, a woman suffering from mental or physical disability, or one over whom the offender has control or dominance.
- Causing grievous harm, maiming, disfigurement, or endangering the life of the victim.
- Repeatedly raping the same woman.
- ***Bharatiya Nagrik Suraksha Sanhita, 2023***

Section 46 of the Code of Criminal Procedure, 1973²⁹, which is now given under Section 43 of the Bharatiya Nagrik Suraksha Sanhita (BNSS), 2023³⁰, states that the arrest of a woman shall only be made by a female police officer.

Section 43(5)³¹ mentions that no woman shall be arrested after sunset and before sunrise, except for exceptional circumstances. And even in those circumstances, a woman police officer shall obtain the prior permission of the magistrate of the first class before the arrest. This section

protects women from arbitrary arrests between sunset and sunrise and from being taken into custody. Prior permission from the magistrate in case of exceptional circumstances adds a

²⁹ Code of Criminal Procedure, No. 2 of 1974, § 46, India Code (1974).

³⁰ Bharatiya Nagrik Suraksha Sanhita, No. 45 of 2023, § 43, India Code (2023).

³¹ Id.

judicial check on police discretion. The section also mandates the presence of a woman police officer during the arrest. This serves as a protective procedural shield to reduce incidents of sexual harassment by male officers during arrest. By requiring a written report in exceptional night arrests, an official record is created, which discourages arbitrary, pretextual, or malicious arrests by police officers.

History of Custodial violence and misuse of power by Police

The violation of human rights by the police has long been a distressingly common practice. Detainees are subjected to assault and torture to extract information. The moment a person is taken into custody, there is a prevailing perception—both among the public and within the system itself—that violence, intimidation, and coercion are routine aspects of custodial interrogation. Although there are several provisions given under Indian criminal law that criminalize custodial violence, the unaccountability of police or judicial officers allows such abuses to persist unchecked. In the landmark case of *D.K. Basu vs. State of West Bengal* (1997)³², the Supreme Court acknowledged the custodial violence and established 11 rules that shall be followed when conducting arrests. The rules emphasize the accountability of police while making arrests.

The report by the Law Commission of India³³, which was released in 1985, recommended the amendment of the Indian Evidence Act 1872³⁴. It recommended the insertion of Section 114-B, according to which “in the prosecution of a police officer for an alleged offense of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in police custody, the court may presume that the injury was caused by the police officer having custody of that person during that period unless the police officer proves to the contrary. The burden of proof lies on the police officer to prove the contrary.” It was recommended by the Law Commission in the year 1985, but unfortunately, until now, it has not seen the light of day. The said provision could have controlled the torture and abuse in custody. There are a number of cases where the torture by police has escalated to death and rape. Most of the cases are not even reported because of the

³² *D.K. Basu v. State of W.B.*, AIR 1997 SC 610 (India).

³³ Law Commission of India, Working Paper on Injuries in Police Custody: Suggested Section 114B Evidence Act 14 (June 14, 1985).

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022080849.pdf>

³⁴ Indian Evidence Act, No. 1 of 1872, India Code (1872).

fear of the authorities.

In the absence of transparent oversight, this power imbalance enables custodial officers to abuse authority without immediate fear of repercussions. Senior officers often protect their subordinates to preserve the institution's image, leading to underreporting and suppression of such crimes. This shields perpetrators and emboldens such criminals. Custodial rape isn't just an individual crime; it's a systematic crime made possible by the shield of police unaccountability.

Scope of Reforms

There have been several reforms that have been introduced from time to time by the Law Commission. Many of these reforms have been addressed by the government, and proper laws are being made based on the suggestions. While there have been active steps taken by the government to reduce the cases of custodial rape, there are several reforms that still can be placed.

- *Time-bound Inquiries*

The inquiries in cases of custodial rape should be time-bound, as it can prevent delays that allow evidence tampering. Already in cases of custodial rape, it is very convenient for the office in charge to tamper with or destroy evidence or witnesses. But at the same time, the inquiry should not be hastened, as a time-bound inquiry must allow sufficient time for a thorough investigation.

- *Involvement of female officers in cases where the person in custody is a woman*

The presence of female police officers in custodial settings has the potential to significantly reduce instances of custodial sexual violence and enhance the prospects of timely detection and reporting of such offenses. A woman detainee is likely to experience a greater sense of security in the presence of a female officer, thereby increasing the likelihood of reporting incidents of misconduct. Moreover, this measure serves to curtail the risk of abuse of authority by male officers, particularly in private or unmonitored areas of custody. Introducing a gender-sensitive custodial framework necessitates the appointment of a higher number of female officers. However, according to the Bureau of Police Research & Development (BPR&D), women's representation

in the police force was around 264,000 in 2022³⁵. Which is around only 12% of all police forces being women.

- *Mandatory medical examination immediately after taking a person into custody.*

Medical examination could act both as a preventive and as an evidentiary protection in cases of custodial assault. As it will record the physical condition of the detainee at the time of custody and will work as a baseline medical documentation, making it harder to deny or cover up injuries or assaults sustained in custody. However, in the case of *Shri D.K. Basu, Ashok K. Johri vs. State of West Bengal, State of U.P.*, it was established that there should be a mandatory medical examination of the detainee every 48 hours during detention. The provision sounds protective on paper, but it has practical limitations. A 48-hour gap provides enough time for injuries to heal superficially, be concealed, or evidence tampered with. Medical examinations typically focus on physical injuries, while custodial crimes often include severe psychological torture, threats, intimidation, sleep deprivation, and mental trauma — which are harder to detect in a routine checkup. There is a need for daily or unannounced/random medical checkups, particularly in sensitive custody cases. Especially a mandatory checkup just after the detainee is detained in the custody, which will ensure a written record of the detainee's condition before he came under the authority of police. There should also be an inclusion of mental health evaluations alongside physical exams.

- *Make reforms that focus on the increased accountability of custodians.*

Making reforms to increase the accountability of custodians ensures that there is institutional fear of consequences and breaks the culture of impunity within the custodial institutions. The accountability could be increased by involving independent oversight committees, CCTV mandates in lockups and areas of custody that are in seclusion, and automatic suspension of such officers on prima facie evidence.

- *Stricter actions should be taken if the accused is found guilty*

In practice, however, there are very few instances where such offenders have been

³⁵ Bureau of Police Research & Development, Govt. of India, Data on Police Organization (2022), https://bprd.nic.in/uploads/pdf/1716639795_d6fce11ed56a985b635c.pdf

subjected to the full extent of punishment prescribed by law. Typically, disciplinary actions such as temporary suspension, nominal fines, or administrative transfers are imposed, while actual custodial sentences remain exceedingly rare. This consistently low conviction rate, combined with insufficient penalties, fosters a culture of impunity and emboldens officers to commit such offenses without fear of meaningful consequences. The imposition of harsher, proportionate punishments would serve as a strong deterrent, convey the state's unequivocal intolerance toward custodial violence, and play a crucial role in restoring public confidence in the administration of justice.

While these reforms could help to decrease the cases of custodial violence and rape, this alone cannot guarantee the safety of women. The change needs to take place on the foundation level. There should be proper training and education of police personnel, army officials, and prison staff, sensitizing them about human rights, gender equality, and the importance of personal dignity. It is concerning that individuals can enter positions of immense authority and power without having internalized the basic values of respecting human life, bodily autonomy, and the rights of others. They should be made to understand that holding official power is a responsibility, not a license to abuse or destroy the lives of vulnerable and innocent people.

Furthermore, measures like the presence of female officers during custody and interrogation can't fully assure the safety of women, as there have been instances where female officers have either colluded in, ignored, or directly participated in the abuse of women detainees, highlighting that gender alone does not automatically ensure ethical policing. Without a shift in institutional culture and accountability mechanisms, such safeguards can be rendered ineffective. A deeper, systemic reassessment is required — one that not only reforms procedures but also reshapes mindsets. This demands the integration of mandatory human rights education, gender sensitization modules, and anti-custodial violence training at every level of police and military academies, continuing throughout their service careers. Equally, there is a need to reform recruitment processes to include psychological profiling and ethical aptitude assessments to weed out candidates with tendencies toward abusive behavior.

Beyond professional training, public discourse and school curricula should incorporate education on rights, consent, dignity, and constitutional values from an early age. A legal system that upholds equality and personal security cannot thrive in a society where the concepts of bodily autonomy, women's rights, and custodial ethics are alien to those tasked with

upholding the law. Real, sustainable change will occur not just through legal provisions and procedural reforms but by addressing the cultural, educational, and moral foundations that normalize abuse of power. Until such awareness and institutional introspection become deeply integrated into the core values of law enforcement and military establishments, custodial violence, including rape, will remain a risk, and procedural safeguards will only serve as partial deterrents.

Conclusion

Custodial rape represents the repugnant condition of crime in the country where the very protectors of law transform into predators under the shield of authority and power. Through this research, it is evident that custodial rape in India is not an isolated or occasional occurrence but a systematic, deeply embedded issue. Cases like Mathura and Pararia have exposed the patterns of impunity, institutional complicity, and judicial insensitivity. There are hundreds of cases of custodial rape where the accused is either acquitted by giving the benefit of the doubt or the inquiry is still going on for years, where the case is passed on from one date to another; meanwhile, the accused are roaming in society with no worries. In several cases, these police officers are promoted to higher posts and are now enjoying reputable positions. Through the cases discussed above, it can be inferred that in several instances, trial courts took an offender-centric approach and acquitted the offender on unreasonable grounds. It is enough to prove that in a number of cases the offenders must have been acquitted either because of insufficient evidence or because the court questioned the victim as a perpetrator on unreasonable grounds. Though with time, there have been amendments in law that discourage the cases of custodial rape and take a victim-centric approach, there is still a lot of room for reforms. The procedural reforms alone cannot eradicate custodial rape. While measures like the involvement of female officers and victim-friendly procedures are crucial, they are not sufficient, and there is a need for systemic cultural change within policing institutions.

Until such systemic changes are achieved and genuinely enforced, custodial rape will remain as an ugly reality of our country. Legal reforms, no matter how progressive on paper, will remain partial deterrents without addressing the deeper cultural, institutional, and moral foundations that enable custodial violence to thrive. The true test of a justice system lies not in how it protects the powerful but in how it safeguards the vulnerable. It is high time India ensures that the protection extends within its custodial walls as well.