
CUSTODIAL VIOLENCE AND CRIMINAL JUSTICE: A STUDY OF POLICE POWERS, CONSTRAINTS, AND ACCOUNTABILITY

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ABSTRACT

The custodial violence is one of the most contentious issues within the criminal investigation system, this paper expresses regarding the concept of historical evolution of custodial practices and the recent developments to the laws. The study adopts the police perspectives of the complexities faced during the investigation. The paper revolves around the research question how can the Indian legal framework effectively balance the prevention of custodial violence with practical challenges faced by police during criminal investigations and further examines the complexities surrounding false allegations of custodial torture and the legal protection available to the public servants acting in good faith. The paper concludes by various suggestions and recommendations for the implication to the existing laws which can resolve foregoing problem.

Keywords: Custodial violence, Torture, Investigation, Legal Frameworks, Harassment

1. Introduction:

The custodial violence is one of the most debated and essential aspect of the criminal justice system where it limits the powers to the police officers also provides the rights to the accused which both acts in the balanced way. Most generally people get confused between the arrest and custody which are indeed has a difference based on the duration of the detention. The police have various functions to be discharged such as maintaining public order, preventing crime, conducting effective investigation¹ whereby during to act in accordance with the obligations various allegations are being made over the powers namely physical abuse, harassment, torture, custodial death. The police are meant as the protector and guardians of the law whereby provided with various powers exercised based on the discretion but must not act in the arbitrary way, which the custodial violence is also averse to the human rights which is being rendered under The Constitution of India, 1950².

2. Custody:

The term Custody is derived from the Latin term “custodia” which means “Guardianship, safekeeping, protection” Custody includes physical surrender by the accused before the court coupled with submission to the jurisdiction and the orders of the court, He who is under the control of the court or is in the physical hold of an officer with coercive power. The term custody is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession.³ The violence which occurs in the custody mean “the use of physical force accompanied by fury, vehemence, or outrage especially physical force unlawfully exercised with the intent to harm⁴”. “Every person who is being accused of being committed a crime is placed under the custody where such custody is divided into two types i.e. Police custody and Judicial custody whereas the police custody the accused is held in the police station or in police lockup whereas in judicial custody, he is locked in jail under the custody of magistrate”⁵.

¹ The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, ss.168,172,176

² The Constitution of India,1950 Art.20,22

³ Tapash Gan Choudhury, Legal and commercial dictionary 213 (Eastern Law House, New Delhi, 6th edn. 2014)

⁴ Bryan A Garner, Black’s Law Dictionary 1801 (Thomson Reuters, 10th edn. 2014)

⁵ Dr. N.V. Paranjape, The Bharatiya Nagarik Suraksha Sanhita, 2023 272 (Central Law Agency, Prayagraj, 9th edn., 2025)

3. Tracing the Historical Roots of Custodial Violence:

The phenomenon of custodial crime is not a new practice in India as we had reference of torture and violence with the police in India even since the Vedic age, “Kautilya’s Artha shastra speaks about speaks about various kinds of torture such as burning of limbs, tearing by wild animals, tramping to death by elephants and bulls, cutting of limbs and mutilation”⁶. During the ancient times, Narada referred the “inhuman practice of pouring hot oil into the mouth, ears and thrusting red-hot iron into the mouth of a criminal sentenced to death”⁷ During the post-Independence Era all the “committees and commissions had revealed the tale of third degree or torture in police custody due to political ends, practice of corruption and lack of infrastructure support of scientific aids and training”⁸. Whereby in the present day situation of the domestic framework for combating custodial crimes where the framework in India both constitutional and statutory contains provisions relating to safeguards arrest, detention, custodial torture and other crimes in the custody which also is been provided in

Bharatiya Nagarik Suraksha Sanhita 2023, Bharatiya Nyaya Sanhita 2023, Bharatiya Sakshya Adhiniyam 2023, Protection of Human Right Act, 1993 and also India has ratified, acceded and signed the International declarations, Covenants, Conventions and treaties.

4. Custodial Policing: Challenges, Responsibilities, and Legal Constraints:

The public-police relationship generally has the lack of trust where the individuals are being mistrusted the police as they may not be able to perform their duties in the pursuit of justice which critically issues driven by incidents of police misconduct, lack of accountability, political interference, ineffective investigation. “The general credibility of the police and the investigation agencies in the country is very low, whereas it is abhorrent that all police are mistrusted by default under law which leads to that police would not be able to perform their duties in pursuit of justice”⁹ Unfavourable opinion of the police during any event involving the matter of public interest would also lead to the lack in trust towards the police.

⁶ R Chakraborty, Law on custodial death and Torture 28 (Kamal Publishers, New Delhi, 2018)

⁷ Dr. Asifa Parveen, Dr. Naaz Aktar Siddique, “Historical Perspective of custodial tortures in India”, 8 Journal of emerging technologies and innovative research 864 (2021)

⁸ *Supra* note 6

⁹ R Sri. Kumar, “Trusting the police: Challenges of criminal Investigation and trials in India” Daksh India (2018)

The limitation period for the investigation of an accused to the police is 15 days in the custody and can be authorised in whole or in parts during the term of 40 to 60 days from the date of arrest¹⁰ due to this limitation police face significant limitation for the interrogation which leads to the inability to repeatedly interrogate an accused for the verification of the statements being made by the accused which leads to the coercive methods.¹¹ Sometimes the suspect may remain silent and gives false information related to the crimes which might lead to the misleading of the case where use of coercive method act as essential aspect.

The interference from the individuals from the political background is also a main stumbling block for the functioning of the criminal interrogation where the supreme court¹² laid down 7 guidelines by the constitution of a state security commission where one among such a directive is to “Ensure that the state government does not exercise unwarranted influence or pressure on the police”.

The exigent problem of the police in the investigation is securing evidence due to lack of proper investigation tools, hostility of witness, trust on police leads to the letdown and low conviction of the offenders. The conviction rate for the IPC crimes in the country has shown a mixed trend with the conviction rate of 42.4% to 46.9% from 2005 to 2016¹³ which is a very less in number which causes to hamper the justice to be delivered. The primary complexity faced is to capture all the evidence but “India’s outdated forensic facilities hinder effective evidence collection and analysis where it has the requirement for modern forensic resource and development investments”¹⁴ There are a significantly low number of forensic labs in the country there are many states wherein the FLs are less than 3 in number¹⁵.

Balancing Effective Interrogation and Legal Safeguards in Serious Crime Investigation:

Jeremy Bentham has frequently been regarded as the father of the ticking bomb argument in defence of interrogational torture where the jurist states that torturing one person to save many lives is justified. “Much of the literature on torture in recent years takes the position of

¹⁰ The Bharatiya Nagarik Suraksha Sanhita 2023, s.187

¹¹ Niharika Srivastava & Dr. Prashant Kumar Varun, “Custodial Interrogation and the risk of torture: A critical examination” 5 International Journal of advanced research in science, communication and technology 293 (2025)

¹² Prakash Singh & ors. V. UOI & ors. (2006) 8 SCC 1

¹³ Ministry of Home Affairs, “Lok Sabha Unstarred Questions” 2(2017)

¹⁴ Md. Imran wahab, “Challenges encountered by police officers during criminal investigation” 6 International Journal on Multidisciplinary Research 7 (2024)

¹⁵ Ministry of Home Affairs, “Forensic Labs” (2024)

denouncing torture as a basic rule, while allowing for exceptions to the rule in extreme circumstances”¹⁶. As per the idiom of ‘The lesser of two evils’ states that to choose the less harmful or undesirable option when faced with two bad choices where the prominent scholar like Richard Posner stated that “if torture is the only way to prevent a catastrophic event it should be used to protect the greater good”.

The police officers believe that “punishing criminals hamper them from committing more crimes which the prisoners also believes that the prison do not have a deterrent effect on the criminals”¹⁷ The prison officials also believe in the practice of custodial violence while dealing with the criminals especially while handling the cases involved in the heinous crimes such as terrorism, rape, murders. Non-violent method of interrogation techniques is ineffective against criminals who are trained to resist questioning.

5. False Allegations of Custodial Violence: Legal and evidentiary challenges for police:

Courts have noted instances where individuals fabricate claims of custodial torture to escape lawful investigation which also hinders the investigation process and brings unnecessary hurdles. In the Gauhati High Court before Hon’ble Justice C.R. Sarma where the case related to the murder of the deceased, where the court held that the “custodial torture is false and concocted”¹⁸. The law provides both the legal & Human rights and the power of investigation to the police officers whereas both must be balanced.

Judicial vigilance functions by ensuring that police are not subjected to false accusation which hinder the legitimate investigation but this is balanced against the need to prevent the abuse of power provided. The Allahabad High Court dismissed a case where a “family alleged custodial torture following a death, after the court noticed that the deceased had been arrested after an exchange of fire was immediately produced before the magistrate where the criminal proceedings initiated without prior sanction were erroneous and illegal”¹⁹.

¹⁶ Vittorio Bufacchi & Jean Maria Arrigo, “Torture, Terrorism and the state: a Refutation of the Ticking Bomb Argument” *Journal of applied philosophy* 357 (2006)

¹⁷ Syed Asfar Alam, “Custodial Violence in India” *7 International Journal of Law Management & Humanities* 1271 (2024)

¹⁸ *Amitava Sinha v. The State of Assam and anr.* 2015 SC (Gau) 353

¹⁹ *Akhilesh vs State of U.P.* CrI. No. 1554 of 1985

The Bharatiya Nagarik Suraksha Sanhitha, 2023²⁰ provides the immunity to the judges, magistrates and the public servants from the prosecution for offenses committed while acting in the discharge of the official duty. The section to be applied must qualify the two-pronged test wherein on satisfaction of which the concerned public officer must procure a sanction from the government. The two conditions for the applicability are that the “accused must be a public servant removable from his office by and the second condition is that the offence alleged against the public servant should have been committed by him while acting in the discharge of his official duty”²¹. The blanket of protection does not extend its protection to every act of the “public servant exercised during the service instead it is restricted to only those acts which are done in the discharge of official duties”²².

7. Evolving Legal Framework on Custodial Violence: Recent Developments & Challenges

The implementation of the new criminal laws had led to the evolution and developments in the aspect of custodial violence and led to various changes even through the judicial functioning. After the recent Supreme Court²³ judgement being provided the administrative guidelines which mandated that every police station be equipped with the night vision CCTV cameras which must preserve the footage for a minimum of one year which is bedrock of the individual’s dignity in the custodial spaces.

The Police act²⁴ also provides into the area of custodial violence which outlines the penalties for police misconduct, neglect of duty, violence against the persons in the custody. The prevention of torture bill which also aims in the criminalization of the torture by the public officials where the bill has been also passed in the Lok Sabha but had been lapsed in the Rajya Sabha select committee. The Prisons Act, 1894 is related to the custodial violence where the supreme court interpreted the provisions of the act and stated the provisions are outdated and can facilitate abusive behaviour, physical torture which must be regulated.

8. Ensuring accountability while supporting effective policing: Recommendations and suggestions

There is no specific dedicated statute that defines “custodial violence” in India while the term

²⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023 s.218

²¹ Directorate of Enforcement v. Bibhu Prasad Acharya 3181 (2025) 1 SCC 404

²² Shadakshari v. State of Karnataka AIR 2024 SC 590

²³ Paramvir Singh v. Baljit Singh AIR 2021 SC 64

²⁴ The police Act, 1861 s.29

is most essential in case of the custodial torture to be established, despite signing the UN convention against torture (UNCAT) by India in 1997 has not ratified into the domestic laws. There must be a separate cadre of police for investigation and separate for the maintenance of public order whereas this system is being practiced in many developed countries such as the United States of America²⁵ which is named as Federal Bureau of Investigation which is a separate wing which resolves various issues faced during the investigation.

There must be removal of political interference with the utmost exercise of separation of powers and must be removal of political interference with the utmost exercise of separation of powers which must be based on political neutrality and democratic control which must ensure that there must be an absence of arbitrary control and political interference. The Japanese police investigations follow strict hierarchical structure and follow deeply ingrained culture of social conformity²⁶.

Modernize the forensic capability where the investigation must shift from the technique of “confession based” to the “evidence based” which requires for the upgradation of the forensic labs and establish the greater number of forensic labs at most as possible as there are a significantly low number of forensic labs in the country there are many states wherein the FLs are less than 3 in number²⁶. The individuals responsible for the commission of crimes are utilizing the modern technology but the police who needs to curb that act use the outdated practice.

There must be prior sanction and preliminary scrutiny before prosecution of officers being exercised in good faith where the legal defence supports the officers under malicious complaints. There is a huge burden over the individual officers where the government must ensure to fill all the vacancies and reduce the number of cases per officer, due to the high case load which leads to the risk of mismanagement.

9. Conclusion:

The custodial violence is one of the most serious challenges faced during the criminal investigation where it must act in the balanced interest of protecting the fundamental rights of

²⁵ Justice Thomas P Joseph, Justice of High Court of Kerala, Puthoor Gopalkrishnan Memorial Lecture, 2013

²⁶ Japan Police legislation model, legislating for the security sector, Geneva centre for the democratic control of armed forces, 2011

²⁶ *Supra* note 15

the accused and must also protect the law and public order, but it must also be mentioned that the police officers work under.

The custodial violence is one of the most serious challenges faced during the criminal investigation where it must act in the balanced interest of protecting the fundamental rights of the accused and must also protect the law and public order, but it must also be mentioned that the police officers work under many constrains such as the workload, limited resources, public pressure, political influence. There has been into various legal developments such as the judicial monitoring, surveillance of the police station but there needs to be various changes and laws to solve the existing issue.