

An Evaluative Study Upon The Problems And Perspectives Of Custodial Violence In India

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Abstract

Custodial violence involves many types of treatment that an individual in jail, police custody, or court custody may experience for a variety of reasons. The current study is concerned with determining the core causes of prevalence of violence and the means by which this heinous injustice might be avoided. Custodial violence appears to be a serious challenge in developing economies such as India, where the bulk of the populace is still ignorant about many laws that safeguard their basic fundamental rights provided under the Constitution of India. Police agencies is one of the government's regulatory authorities entrusted with maintaining communal harmony and well-being. The fact that police officers have a low risk of recurrence for the horrific act of torturing has only incentivized more cops to conduct it. Despite legislative statements and vows, the absence of efficient legal help at police organizations is a substantial barrier for those who have been arrested or detained. To close the judicial privilege gap among the highly wealthy and the most vulnerable, the Indian government must emphasise that the nation's fundamental socioeconomic variety cannot be used to limit access. The task at hand is a study plan that aims to explain the objectives of custodial violence during police and judicial custody, evaluating the problems associated with custodial violence within the Indian police system, and discussing the interventions available to overcome the issue of custodial violence. Secondary sources were used to collect data for the study. The qualitative technique was used to create the research paper. Descriptive method is performed to identify the characteristics of a goal or the coefficient of determination. The finding depicts an urgent considerable need for a thorough examination of current legislation, protocols, policies, and institutions for the incarceration and care of those who have been arrested, jailed, or detained.

1. Introduction

Torture is described as the intended inflicting of extreme mental or bodily pain or anguish for a specific goal with or by the cooperation of public officials. The goal of using torture is always to dehumanize the target. Ultimately, violence by policemen demonstrates a systematic failure of Indian states and the national government to develop concrete policy framework. Despite widespread restrictions, officials often fail to perform thorough inquiries and convict police officers involved in brutality and ill-treatment of detainees¹. In the year 2021, 151 custody fatalities were registered in India, with Maharashtra registering the most at 26². Having robust federal statutes, Maharashtra comes up short when it comes to investigating custodial fatalities. The below mentioned figure demonstrate the custodial violence as per NHRC.

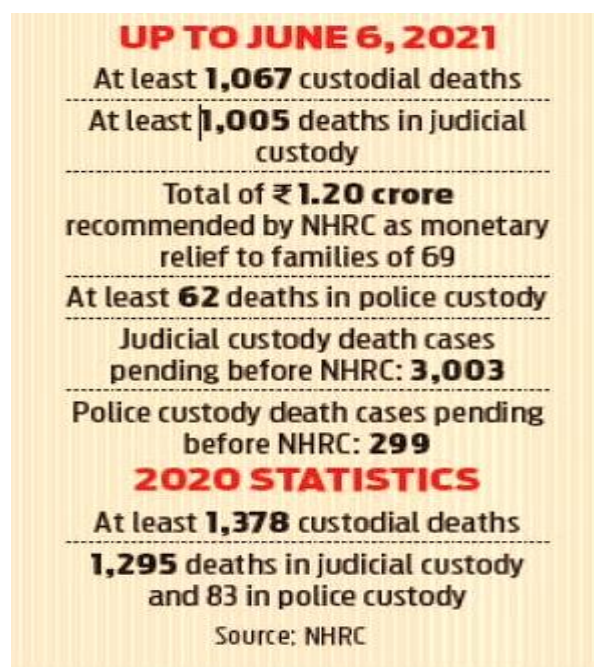


Figure 1 Source: list of NHRC updates on custodial deaths and inactivates³.

Law enforcement is one of the coercive tools of administration entrusted with maintaining public harmony and welfare. Comprehensive inspections of torture charges and the conviction of those involved are critical components in the deterrence of torture. The low recidivism rate of police officers for the horrendous crime of torture has merely incentivized more officers to perpetrate

¹ Nanavati, Heer. "A STUDY ON CUSTODIAL TORTURE AND THEIR RIGHTS." (2020).

² Free Press Journal, "Maharashtra records highest number of custodial deaths in 2021, says MoS Home Affairs Nityanand Rai." (2021). Scribb: <https://www.freepressjournal.in/india/maharashtra-records-highest-number-of-custodial-deaths-in-2021-says-mos-home-affairs-nityanand-rai>

³New, Indian Express. (2022). https://www.google.com/imgres?imgurl=https%3A%2F%2Fimages.newindianexpress.com%2Fuploads%2Fuser%2Fckeditor_images%2Farticle%2F2021%2F7%2F10%2Fdd.JPG&imgrefurl=https%3A%2F%2Fwww.newindianexpress.com%2Fthesundaystandard%2F2021%2Fjul%2F11%2Fstan-sw

torture⁴. Within these conditions, there exists an imperative necessity to thoroughly investigate and study the topic of custodial torture to build criminal jurisprudence and hold police personnel liable for their acts.

1.1 Background

Custodial torture, according to the Supreme Court, is a barefaced fissure of social uprightness and humiliation that degrades, to a substantial fraction, human individuality. When the police arrest a suspect and put him or her in detention, the state bears complete responsibility for the protection of that person's freedoms and liberties under the duties of international and national human rights law⁵. Custodial torture as well as other police crimes continue to be practiced in India, and indeed the "privileged" are not immune to third-degree abuse. In 2021, Maharashtra had the largest number of custodial fatalities, trailed by Gujarat and Bihar⁶. In response to a query on custody fatalities in Parliament, the National Human Rights Commission (NHRC) revealed that Maharashtra had 26 deaths while in custody, trailed by Gujarat, which had 21 fatalities, and Bihar, which had 18 deaths in 2021 until November 15. According to the 7th Schedule of the Indian Constitution, police and state order are state issues⁷. It is essentially the obligation of the state authority in question to prohibit and guarantee that police atrocity does not occur, as well as to defend civil liberties. On these lines the former Supreme Court Justice Shri VR Krishna Iyer once said that “ Custodial Violence is the worst form of terrorism as the authority of the state is behind it ”

Notwithstanding such declarations and pledges, the lack of effective legal assistance at police units is a significant hurdle for persons who have also been detained or incarcerated. To bridge the prosecutorial immunity gap among the very wealthy and the most disadvantaged, the Indian judiciary must emphasize that the fundamentals of socioeconomic variety that exist in the country can't ever be used to deny rights⁸. The below mentioned figure states that custodial torture is a global issue.

⁴ Raj, Pracheen. "CUSTODIAL DEATH CRITICAL ANALYSIS." *Ilkogretim Online* 20.1 (2021). Raj, Pracheen. "CUSTODIAL DEATH CRITICAL ANALYSIS." *Ilkogretim Online* 20.1 (2021).

⁵ Doss, Hannah Divyanka. "Custodial torture: means that have no end." (2020): 46-52.

⁶ Free Press Journal, "Maharashtra records highest number of custodial deaths in 2021, says MoS Home Affairs Nityanand Rai." (2021). Scribb: <https://www.freepressjournal.in/india/maharashtra-records-highest-number-of-custodial-deaths-in-2021-says-mos-home-affairs-nityanand-rai>

⁷ Swenden, Wilfried, and Rekha Saxena. "Policing the federation: The Supreme Court and judicial federalism in India." *Territory, Politics, Governance* (2021): 1-20.

⁸ Haider, Kulsum. "A Socio-Legal Study of Custodial Violence in India." (2021): 1-28.



Figure 2 Source: Global causes and survey figure ⁹

1.2. Literature review

According to a study produced by a coalition of non-governmental groups combating prison torture, 1,731 people died in detention in 2019. There were 1,606 judicial custody fatalities including 125 relating to police custodial deaths¹⁰. The Indian police acts underneath the cover of immunity conferred by the Criminal Procedure Code and also the notion of constitutional immunity. This impunity has progressed to the point in which, in some jurisdictions, police officers are permitted to operate with impunity.

⁹ Insights on Indian, (2022). <https://www.google.com/imgres?imgurl=https%3A%2F%2Fwww.insightsonindia.com%2Fwp-content%2Fuploads%2F2019%2F03%2Feditorial-9.png&imgrefurl=https%3A%2F%2Fwww.insightsonindia.com%2F2019%2F03%2F28%2Finsights-into-editorial-reality-of-impunity-rhetor>

¹⁰ Mohit Kumar Gupta, "Suggestions To Curb The Menace Of Custodial Violence And Brutality: Targeting The Ill-Conceived Notion Of 'My Area, My Custody, And My Law'". (2021). Scribb: <https://www.livelaw.in/law-firms/law-firm-articles-/custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197#:~:text=The%20National%20Human%20Rights%20Commission,losing%20their%20life%20in%20custody>

Since time immemorial, police brutality in India has taken numerous forms, from the distressing **Mathura Rape Case**¹¹ in police prison to the recent murder of **Jayaraj and Bennix**¹² in Tamil Nadu by cops. Article 21 of the Indian Constitution, as established by the Supreme Court (SC) in landmark cases such as **Bhim Singh v. State of Jammu and Kashmir**¹³, **Rudul Sah v. State of Bihar**¹⁴, and **Nilabati Behara v. State of Orissa**¹⁵, offers a source of prima facie requirements for police investigators. To prevent misuse of legislation, the Supreme Court declared in **Sube Singh v. State of Haryana**¹⁶ that the degree of proof required to establish such police abuse is substantial, thus this remedy may be employed only in cases of obvious enforcement of basic rights.

In several cases, the Supreme Court of India has acknowledged the necessity of police oversight and rehabilitation. It has also published police rules designated as the **DK Basu Guidelines**¹⁷. By establishing a body of rules for the police to adhere to, these rules are designed to improve responsibility among police personnel and to guarantee that proper remedies are accessible to affected parties. However, the police seldom follow these principles. The Court also ordered the establishment of "police complaint authorities." These were supposed to be entities that kept track of complaints against police personnel of all ranks, states, and districts¹⁸.

1.3. Research question

1. What are the elements which constitute custodial violence?
2. What is the role of Indian judiciary within the perspective of custodial violence?
3. What would be the suggestions to cure the heinous act of custodial violence in India?

1.4. Research objective

1. To analyse the perspective of custodial violence during police and judicial custody.
2. To evaluate the problems related to custodial violence within the Indian police system.
3. To discuss the interventions available to overcome the issue of custodial violence.

1.5. Limitations

The paper is limited to the research of problems and perspectives of custodial violence in Maharashtra, India.

¹¹ 1979 AIR 185, 1979 SCR (1) 810, 1979 SCC (2) 143

¹² Aditya Ranjan, "A year after Jayaraj-Bennix custodial deaths, police excesses go unchecked". (2021). Scribb: <https://www.livelaw.in/law-firms/law-firm-articles-/custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197#:~:text=The%20National%20Human%20Rights%20Commission,losing%20their%20life%20in%20custody>

¹³ AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, (1985) 4 SCC 677, 1986 (1) UJ 458 SC

¹⁴ Rudul Sah v. State of Bihar, (1983) 4 SCC 141

¹⁵ AIR 1993 SC 1960

¹⁶ Writ Petition (crl.) 237 of 1998

¹⁷ AIR 1997 SC 610

¹⁸ Aston, Joshua N. Torture Behind Bars: Role of the Police Force in India. Oxford University Press, 2020.

2. Methodology

Data was collected using both primary and secondary sources¹⁹. Various sources, including articles, journals, web pages, e-newspapers, periodicals, and online websites, were accessed using the secondary data collection method. The qualitative method was chosen to design the research paper. Descriptive analysis are used to define the characteristics of an objective or the relationship between variables²⁰. To carry out this study analysis, the interpretivism paradigm is used. It investigates the perspectives and ideas of various members of society on the topic of research. In the sense of a recent evaluation of the judicial decision, this inquiry investigates the paradigm for interpretation as the comparative judgment examines different people's perspectives on the question of examination²¹.

3. Data analysis

1. What are the elements which constitute custodial violence?

Custodial violence can be both physical and psychological in nature. It can also involve passivity or excessive recklessness behaviour that results in murder, abuse and torture, as well as other atrocities perpetrated while in police or judicial custody. Within the realm of physical violence, tactics commonly used to inflict physical harm or abuse on captives include disfigurement and tiredness.²² Furthermore, torturing the sufferer to the point that the subject fears death. Forcing alleged victims to sleep on cold and wet floors, or indoctrinating people to remain naked in winter conditions or under heat in temperatures above 30 degrees. Furthermore, sharp items are used to make scuffs and wounds on various places of the body and also, at times the accused is forced to drink his own urine and involve them in unnatural sexual activities as well.

In the instance of psychological violence, the accused is given manipulated and deceptive facts in order to shatter his beliefs and confidence.²³ Compulsion or coercion occurs when the victim is forced or pressured to conduct or see behaviours that psychologically torment him. Another form of tactics is to force the victim to breach societal taboos or to see the humiliation of other victims. Similarly, denying the victim of fundamental requirements like as hydration, meal, rest, and

¹⁹ Willmott, Hugh. "On research methodology." *The Journal of Organization and Discourse* 1.1 (2020): 1-4.

²⁰ Al-Ababneh, Mukhles M. "Linking ontology, epistemology and research methodology." *Science & Philosophy* 8.1 (2020): 75-91.

²¹ Zawacki-Richter, Olaf, et al. *Systematic reviews in educational research: Methodology, perspectives and application*. Springer Nature, 2020.

²² Manmeet Singh, "Custodial Violence in India". (2021). <http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html#:~:text=Custodial%20violence%20primarily%20refers%20to%20violence%20in%20police%20custody%20and%20judicial%20custody,-Besides%20death%2C%20rape&text=As%20regards%20deaths%20in%20police.population%20during%20a%20given%20period.>

²³ V. Sorna Lakshmi, "CUSTODIAL VIOLENCE: CAUSES, CONSEQUENCES AND PREVENTIVE MEASURES", College Name – Law College, Dehradun, Uttaranchal University. (2019). [file:///C:/Users/user/Downloads/JETIR1904E04%20\(1\).pdf](file:///C:/Users/user/Downloads/JETIR1904E04%20(1).pdf)

bathroom facilities causes disorientation and bewilderment, as is done to suspects or prisoners. Additionally, pharmacological tactics such as the use of different medicines to aid torture of the victim is also reported. Harassment and embarrassments are also aimed upon those in jail, their members of the family, or friends are also used against the accused.²⁴In short custodial torture refers to bodily pain or suffering inflicted by those in power over the powerless in the police or judicial custody for the purpose of extracting confessions, discovery of property or information.

The below mentioned article clipping provides a classic example of the menace of custodial torture and its end results.

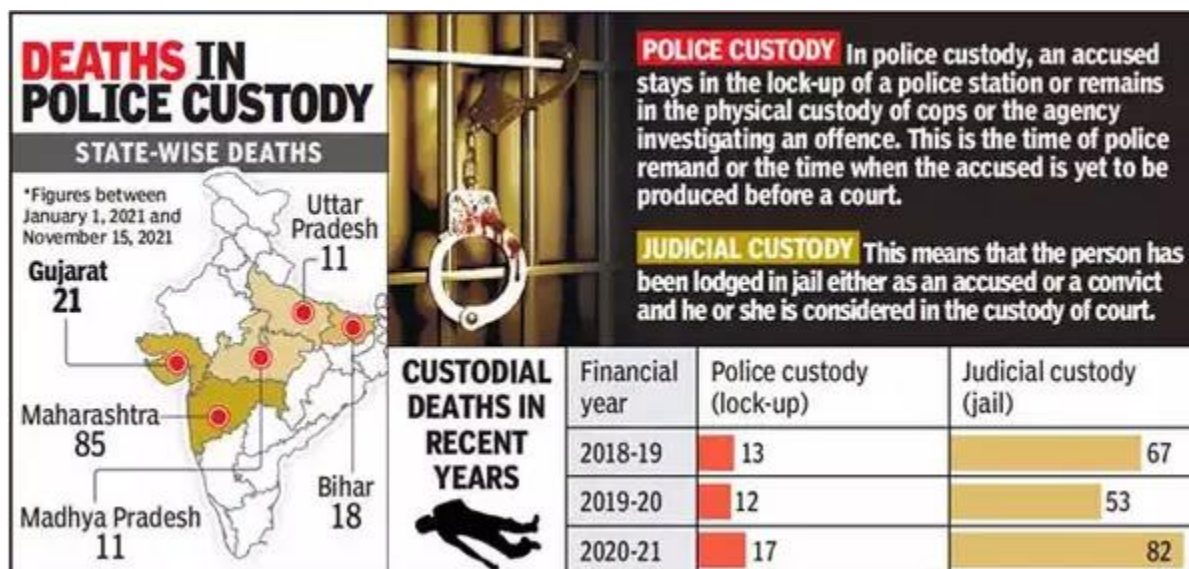


Figure 3 Source: Deaths in Police custody from 2018-2021 ²⁵

Further, stating the constituents or elements of torture it can be stated that the root of the problem of custodial violence, arises from the cause that the police have to deal with work related pressure and their salaries are not being commensurate with their nature of job, all the more makes them difficult to make both the ends meet and ultimately the pressure is vented on the offenders ,resulting in custodial violence²⁶.Torture is therefore seen as a short cut method to relieve work pressure and extract the maximum information possible before the accused is produced before the magistrate on the expiry of 24 hrs of arrest as per Article 22(2) of the Indian Constitution.

²⁴ Abiyaa R, “Custodial Violence – Indian Perspective”. (2022). <https://www.legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html>

²⁵ Static, (2022). <https://www.google.com/imgres?imgurl=https%3A%2F%2Fstatic.toiimg.com%2Fthumb%2Fimgsize-23456%2Cmsid-88019865%2Cwidth-600%2Cresizemode-4%2F88019865.jpg&imgrefurl=https%3A%2F%2Ftimesofindia.indiatimes.com%2Fcity%2Fahmedabad%2Fgujarat-second-highes>

²⁶ Chinmay, “Custodial Violence In India”. (2022). <https://www.legalserviceindia.com/legal/article-5932-custodial-violence-in-india.html>

Other cause is punitive violence, some police officers are honest but misinformed and are not adequately prepared to deal with suspects. Because they believe that sound hitting is the best method to control the offenders. This increases the number of cases of in-custody violence for which the accused are harassed²⁷.

Similarly, lack of sensitised training and inadequate knowledge on human rights which forbid custodial torture is totally missing is also one of the major causes of custodial violence. Absence of regular training keeps them unaware of the various enactments related to criminal jurisprudence and custody management. Police officers should be instructed not to abuse their authority or mistreat the people, for whom they should act as caregivers in times of need²⁸. The police should be advised to avoid brutality and needless harshness in the detention, as this produces unwarranted dread among the accused.

On the other hand, Greed for money has been found to be cause in various instances. Police officers treat those apprehended severely, irrespective of the crime committed by them. As a result of the brutality in detention, the accused is forced to pay the money as a protection amount to protect themselves²⁹. Also, the court cases are so heavily reliant on the FIR, which is completely in the hands of the police officials, they even blackmail the innocent people into giving money, and if they do not accede to their demands, they threaten to involve the honest man and beat him up or keep him waiting in the police station until he pays the money demanded.

Furthermore, it can also be said power has a way of making men giddy, and cops are no exception. Police officers are given authority to truly uphold the law and safeguard citizens. Conversely, it is occasionally the urge to settle a case as soon as possible, and often pure greed, that drives them to utilize this power unlawfully³⁰. As per Article 21 of the Constitution, nobody ever shall be deprived of his life or personal rights unless one follows the method prescribed by the law, and is an inherent guarantee against brutality or assault by the government or its personnel³¹. Torture and abuse of power, on the other hand, have unhappily established part of police procedures, and in many instances, custodial fatalities have indeed been deemed to be nothing short of 'custodial murder.' Custodial violence calls into doubt the legitimacy of the legal system and the governance of the criminal justice process.

Various research has shown ruthless crimes against humanity occurring during the trial, when the police, to obtain substantiation or confessions, frequently indulge in third-degree processes such as torture and arrest strategies, by either not tracing them or by referring to the confinement as

²⁷ Batar, Sourabh. "A socio-legal study of police atrocities." *Asian Journal of Multidimensional Research* 10.12 (2021): 624-630.

²⁸ Kendall, John. *Regulating Police Detention: Voices from behind closed doors*. Policy Press, 2018.

²⁹ Kelly, Tobias. "The struggle against torture: Challenges, assumptions and new directions." *Journal of Human Rights Practice* 11.2 (2019): 324-333.

³⁰ Kamasai, S. V. M. "Judicial Dynamism and Custodial Violence." *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 12.12 (2021): 547-551.

³¹ Lee, Bandy X.. *Violence: An Interdisciplinary Approach to Causes, Consequences, and Cures*. United Kingdom, Wiley, 2019.

"sustained interrogations³²." Cruelty or brutality, ineffective, or demeaning conduct, whether at an investigation, detention, or inadvertently, must be strongly opposed. If public officials become lawbreakers, it creates disrespect for the law, and thus no civilized country can tolerate it.

The below mentioned table provides the count of cases and charge sheets filed in cases of deaths, depicting a clear picture of police ignorance of the critical issue involving police negligence and inadequate administration of the issue.

| Cases Registered and Charge Sheets filed in Cases of Death in Police Custody, 2010-2019 | | | | | |
|---|-------------------------|------------------|---------------------------------------|--------------------------------|-------------------------------------|
| Year | Death in Police Custody | Cases Registered | Police personnel Arrested | Police personnel Chargesheeted | Cases Registered (as a % of Deaths) |
| 2010 | 82 | 42 | Information not provided / maintained | 26 | 51.22 |
| 2011 | 123 | 59 | | 14 | 47.97 |
| 2012 | 129 | 70 | | 10 | 54.26 |
| 2013 | 133 | 71 | | 2 | 53.38 |
| 2014 | 93 | 28 | | 26 | 30.11 |
| 2015 | 97 | 33 | | 28 | 34.02 |
| 2016 | 92 | 25 | | 24 | 27.17 |
| 2017 | 100 | 62 | 33 | 27 | 62 |
| 2018 | 70 | 44 | 23 | 13 | 62.86 |
| 2019 | 85 | 38 | 28 | 16 | 44.71 |
| Total | 1,004 | 472 | 84 | 186 | 47.01 |

Figure 4 Source: case list and charge sheets filed from 2010-2019³³.

2. What role does the judiciary of India have within the perspective of custodial violence?

After learning that almost 1,888 people died — in either jail or police stations — in the previous 20 years, the Supreme Court deemed the execution of a sequence of orders to reduce custodial mortality to be significantly inefficient and sought explanations from the Union and state governments³⁴. The 1948- Universal Declaration of Human Rights, the 2006 Model Police Act, and the relevant laws established in **D.K. Basu v. State of West Bengal**³⁵ (Police must look into

³² Berman, Sara J., and Bergman, Paul. The Criminal Law Handbook: Know Your Rights, Survive the System. United States, NOLO, 2022.

³³ Digital ocean space, (2022). https://www.google.com/imgres?imgurl=https%3A%2F%2Fs01.sgp1.cdn.digitaloceanspaces.com%2Finline%2Fyqi_cumpmed-1605771372.png&imgrefurl=https%3A%2F%2Fscroll.in%2Farticle%2F978919%2Fexisting-data-on-custodial-deaths-in-india-fails-to-give-a-full-pi

³⁴ India Today, "1,888 custodial deaths in India over last 20 years but only 26 cops convicted: Official data" (2021). [https://www.indiatoday.in/india/story/custodial-deaths-india-policemen-convicted-ncrb-data-altaf-case-1877539-2021-11-17#:~:text=%3A%20File%2FRepresentative\)-.In%20the%20last%2020%20years%2C%201%2C888%20custodial%20deaths%20have%20been.custodial%20deaths%20in%20this%20period.](https://www.indiatoday.in/india/story/custodial-deaths-india-policemen-convicted-ncrb-data-altaf-case-1877539-2021-11-17#:~:text=%3A%20File%2FRepresentative)-.In%20the%20last%2020%20years%2C%201%2C888%20custodial%20deaths%20have%20been.custodial%20deaths%20in%20this%20period.)

³⁵ AIR 1997 SC 610

the matter and interrogate the individual, and they are also not allowed to use third-degree cruelty to obtain information.³⁶ **Yashwant and Others v. Maharashtra State**³⁷ (The guilty verdict of a few police officers was affirmed, and it was quipped that certain acts by law enforcement officers strive to erode the overall trust of citizens in the nation's justice system). While many others seemed to become a paltry sum or may be characterized as oddities on their own, yet several publications from the timeframe (2005-2018) as per NCRB revealed that forth of 500 case situations of custodial mortality, only 281 cases could continue indefinitely of being recorded, and of these, only 58 police officials were charged; and ultimately, none encountered any conviction³⁸. In India, the legal structure, both statutory and constitutional, has laws for protection against arrest, imprisonment, custodial mistreatment, and other offenses committed while in custody. The substantive legislation (Indian Penal Code, 1861) punishes anybody who causes damage, torment, or execution on the body of someone in custody³⁹. Several laws in the procedural legislation (Criminal Procedural Code, 1973, and Indian Evidence Act, 1872) protect individuals in custody's legal status⁴⁰. Significant court rulings on the issue have reinforced the appropriate constitutional and legislative provisions. Furthermore, the Protection of Human Rights Act of 1993 establishes organizations such as the Central and Provincial Human Rights Commissions, along with Human Rights Courts, to improve the preservation of an individual's civil rights in custody⁴¹. India has formally adopted, annexed to, and signed the following global conventions, declarations, commandments, and treaty obligations: The Universal Declaration of Human Rights (UDHR) 1948, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD 1963), the International Covenant on Civil and Political Rights (ICCPR) 1976, International Covenant on Economic, Social, and Cultural Rights (ICESCR) 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1993, the as well as the International Convention on the Protection of All Persons' Rights Against Enforced Disappearance (CPAED) 2010. Apart from this, the United Nations Declaration on the Fundamental Notions of Law for Crime victims and Abuse of Power is significant.

³⁶ Mohit Kumar Gupta, "Suggestions to curb the menace of Custodial Violence and Brutality: Targeting the ill-conceived notion of 'My Area, My Custody, and My Law'". (2021). <https://taxguru.in/corporate-law/suggestions-curb-menace-custodial-violence-brutality-targeting-ill-conceived-notion-my-custody-law.html>

³⁷ (2018) 10 SC 4MLJ (CrI)

³⁸ Mohit Kumar Gupta, "Suggestions To Curb The Menace Of Custodial Violence And Brutality: Targeting The Ill-Conceived Notion Of 'My Area, My Custody, And My Law'". (2021). Scribb: <https://www.livelaw.in/law-firms/law-firm-articles-custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197#:~:text=The%20National%20Human%20Rights%20Commission,losing%20their%20life%20in%20custody>

³⁹ Grady, Standish Grove. The Indian Codes: Comprising the Indian Penal Code, Act XLV. of 1860; the Indian Penal Code Amendment Act, Act XXVII. of 1870; Code of Criminal Procedure, Act XXV. of 1861, and Amendment Act, Act VIII. of 1869; the Code of Civil Procedure, Act VIII. of 1859; Amendment Act, Act IV. of 1860; Amendment Act, Act XXIII. of 1861; Limitation Act, Act XI. of 1861; the Indian Succession Act, Act X. of 1865; the Stamp Act, Act XVIII. of 1869. With Copious Index. United Kingdom, Wildy, 1871.

⁴⁰ Khastgir, Padma. Criminal Major Acts: Code of Criminal Procedure, 1973, Indian Evidence Act, 1872, Indian Penal Code, 1860. India, Kamal Law House, 1995.

⁴¹ The Protection of Human Rights Act, 1993: As Amended by the Protection of Human Rights (Amendment) Act, 2019 (Act No. 19 of 2019), dated 27-7-2019 (w.e.f. 2-8-2019) vide Notification No. S.O.2756(E), dated 1-8-2019. India, Current Publications, 2020.

"In the case of **Prakash Kadam vs. Ramprasad Vishwanath Gupta**⁴², the Supreme Court declared that if a law enforcement officer commits an act contradictory to his or her profession, he or she should be held more accountable than ordinary offenders." The Supreme Court of India, in partnership with the NHRC (National Human Rights Commission), plays a crucial role in the regulation and elimination of custodial torture. The Judiciary has taken major steps to address custody violence, with the Judiciary raising concerns over torture caused by custodial violence. The Maharashtra State Judiciary is pressuring the state to teach police officials and require them to relearn how to behave with inmates⁴³. The key case is **D.K Basu vs. State of West Bengal AIR 1994 S.C 1349**; this case set the criteria that must be obeyed during the arrest and custody of an individual.

In **Vasant s/o. Annarao Bhosle vs. The State of Maharashtra**⁴⁴, it is held that "an assertion in legislation for compensation" for violation of humanitarian law, the safety of which is pledged in the Constitution, is an affirmed remedy for enforcing and protecting such entitlement. In addition, there is a private defense recourse for consequences for tort' stemming from a violation of the basic right. In the current instance, based on the findings, there was a compelling basis for paying damages to the petitioner for her son's death in custody.

3) What would be the suggestions to cure the heinous act of custodial violence in India?

The guidelines of the Law Commission report in its 113th Report (stressed the importance of the inclusion of Section 114B(1) to the Indian Evidence Act, 1872, that would retain the policeman in whose custody the individual experiencing physical injury was, to be subject to criminal prosecution)⁴⁵, 152nd Report (Many such assessments that can be obtained to curtail custodial crimes⁴⁶), and 273rd Report (The administration obligation endorse the UN Concord In contradiction of Torment by implementing a statutory instrument⁴⁷). The Hon'ble Supreme Court of India's order to install CCTV cameras in police stations as stated in case of **Paramvir Singh Saini vs. Baljit Singh & Others SLP**⁴⁸ is sufficient to induce the requisite reprieve of enclosing custodial violence, if not wholly if followed by the state in true spirit.

After obtaining police or judicial custody orders from the magistrates, a specialized external group of policemen must be formed/sanctioned and made available district-wide to conduct interrogation/investigation alongside officers involved in specific aspects of criminal infractions. The mentioned unit should indeed report back into local Police Inspector or the Deputy Officer, as appropriate. In light of such course of action of the Hon'ble Bombay High Court in the case of

⁴² (2011) 6 SCC 189

⁴³ Sane, Mandar Ramchandra, et al. "Custodial deaths: a ten years experience from Central Maharashtra." *Journal of Indian Academy of Forensic Medicine* 38.3 (2016): 299-302.

⁴⁴ 2016 ALL MR (Cri) 2788, Criminal Writ Petition No.905 of 2012

⁴⁵ Raj, Pracheen. "CUSTODIAL DEATH CRITICAL ANALYSIS." *Ilkogretim Online* 20.1 (2021).

⁴⁶ Nirmal Singh Heera, A., and N. Prabhavathi. "Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India-A Critical Analysis." *Indian Journal of Forensic Medicine & Toxicology* 15.2 (2021).

⁴⁷ Pahwa, Ravi. "Deconstructing police powers under Criminal Procedure Code, 1973." *Available at SSRN* 3963677 (2021).

⁴⁸ (Criminal) No. 3543 of 2020

Pravin Vijaykumar Taware vs The Special Executive Magistrate⁴⁹, , the regime's divinely appointed Special Executive Magistrates (SEMs) require leadership program and reorganisations such that pivotal appraisal is formed prior to actually detaining the alleged offender to detention centers in a haptic form with in discharge of its duties as according to Chapter VIII of the Code of Criminal Procedure, 1973⁵⁰.

Chapter 8 of the Cr . p.c. Code deals with the rules governing the assurance for peaceful coexistence and behaviour. Elaborating the sections:

- Section 106 provides for the provision of security for the maintenance of the peace in the event of a conviction.
- In other circumstances, security to protect the peace 107th Section
- Protection from those propagating seditious information Section 108
- Security in exchange for good behaviour from suspects Section 109
- Section 110 provides security for good behaviour from persistent criminals.
- Section 111 Orders to be issued
- Procedure for Persons Appearing in Court Section 112
- Summons or order in the absence of the person Section 113
- Section 114 requires a copy of the order to accompany the summons or warrant.
- The ability to forego personal attendance 115th Section
- Inquiry into the veracity of information Section 116
- In order to provide security 117th Section
- Release of the person charged under Section 118
- Start of the time during which security is required 119th Section
- Section 120: Bond Contents
- The authority to refuse sureties 121st Section
- Section 122: Imprisonment for failure to provide security
- Possibility of releasing people jailed for failing to provide security 123rd Section
- Section 124 provides security for the bond's unexpired term.

Further, suggestion that should be taken into consideration are as follows:

- • It is vital to increase public awareness in addition to removing the widely held idea that perhaps the word "Remand" corresponds to legalised brutal punishment or mistreatment. Remand means to return back at its most basic aspect, whereas police remand is indeed Police Custody/Custodial Remand (PCR)⁵¹.

⁴⁹ CrI. WP 2682/2008

⁵⁰ <https://taxguru.in/corporate-law/suggestions-curb-menace-custodial-violence-brutality-targeting-ill-conceived-notion-my-custody-law.html>

⁵¹ Vishwakarma, Shaline. "The scope of changes in the criminal law system in India: To eradicate the non-effective provision in statue." *Linguistics and Culture Review* 5.S4 (2021): 2457-2469.

- In situations of prevalence of violence, departmental response within the authorities has to be proactive and positive, without depending for court judgements to create trust in the minds of the aggrieved party and possible injured people of the community.
- Police officers operating under duress and on a demanding schedule must modify their work schedules to allow for physical and mental recuperation⁵².
- Increasing the employment of more sensitive police officers or teaching police officers to act with more sensitivity. The police personnel must understand that their job is to preserve human rights, not to infringe them. They must be periodically sensitized and encouraged to use empirical questioning and inquiry methods such as the lie detecting examination, narco exam, and brain or fingerprinting check⁵³.

Result and finding

According to the qualitative analysis of the findings, aim, and question, Custodial Violence or Torture is a flagrant misuse of legal power in an unlawful manner that is predominantly found to be conducted against the oppressed, underprivileged, and non-influential people. It can vary from a single slap to repetitive strikes and the imposition of severe and non-grievous perceptible lesions, as well as the conduct of harassing, intimidating, invasion of physical privacy, and illegal methods of obstructing urgent medical and legal aid. This violence is unbefitting of a policeman who is largely based on erroneous assumptions of powers of the state and is often noticed riddled with self-aggrandizement and partiality or engendered by a sheer zeal to infuse speedy justice by retaining the suspect as a declared offender, and no doubt, these deeds rattle public faith in the police and are of the essence that incites innocent victims for becoming criminals and antisemites. Police must recognize that in cases of inquiry, they are just acting as the judiciary's jerking motions and cannot be the first and final authoritative figure to declare and impose punishment.

It may be noted that The Police Act of 1860, Prisons act of 1894 are age old statutes enacted during the British rule with the sole objective of suppressing the peoples right and have an upperhand over the masses who mostly belonged to poor, down trodden, peasants and freedom fighters. At that time protection of one's fundamental rights was a distant dream. This British regime mentality prevails till date and therefore, it is one of the reasons of custodial torture. The Police believe in their fists rather than wits. Coupled with culture of impunity enjoyed by the police under Sec 197 of Cr pc 1972 adds more fuel to the fire and remains unabated by working in the closed system.

The fact that Anti Torture bill 2010 which is still to see the light of the day reflects the poor political will to introduce the same so as to enjoy the support of these law enforcement agencies for their vested interests.

⁵² Yadav, Maneesh. "JUDICIAL ACTIVISM, PRISON MANAGEMENT AND PRISONERS' RIGHTS IN INDIA: AN ANALYSIS." *Journal of Critical Reviews* 7.14 (2020).

⁵³ Singh, Vijay Kumar. "Compensatory Justice Jurisprudence in INDIAN Public Law—An Analysis." *NLUA Law and Policy Review* 3 (2018).

4. Conclusion and recommendation

Custodial violence and fatalities are not new phenomena. It has persisted in our civilization over the years. Despite various measures in the latest days, torture and inhumane treatment remain widespread in India, depriving hundreds of people of their basic dignity. Custodial torture is now so frequent that not just the cops and bureaucrats, but also the general public, accept it as a standard police interrogator tactic. As a consequence, news of such heinous behaviour has little effect on society other than a brief shock. When a detainee dies, there's also a public outcry that either fades away soon or is at best subdued by the formation of an inquiring committee. It is the core of a police officer's legal responsibilities which have been ignored extensively.

5.2. Recommendation

An effective strategy for prevention would need to meet the following requirements:

- Principles for providing education and coaching to the police authorities should be executed that will help the officials in dealing with cases encompassing the responsibility to keep in mind detainees legal rights. This is because violence cannot be proficiently precluded until senior police foresee the inertia of these problems and concoct a direct revamping from current practices.
- Assimilated measures must take account of specialized knowledge of practise in deterring police violence and custody drownings, however this insight should be integrated with an insight of the instances of police intervention and custody torture, the complexities and circumstances under which regulation is performed, and an awareness of ability and resource constraints.
- Particular focus should be given while designing the framework to the selection of measures that are feasible in the near term. Other approaches, on the other hand, may have a significant influence on the issue only in the longer term.
- All actions should ideally be based on existing methods, procedures, and rules, and should be compatible with successful policing. As a result, the preventative structure should help to improve the competence of the Indian police.
- The preventive strategy may contain elements that are universal both to police response and custody fatalities, but it should contain elements that are particular to certain groups of deaths in regards of their conditions of incidence or causation. Because over 70% of these killings are the consequence of police use of force, the preventative approach should place a special emphasis on resolving issues related to the use of force.
- Steps to increase the incidence of police response and detention deaths should be combined with action to improve policeman security to the greatest extent practicable.
- Factors relevant to the prioritisation and preliminary aiming of measures may involve the majority of police acts and remand deaths within these areas, areas where police officers

are more regularly faced with situation that requires the use of force, and areas in which a larger group of individuals are positioned in police custody.

- India should advocate for police and jail reforms so the prison system, which is plagued by opacity, may acquire some openness.
- India should adopt the Law Commission of India's 273rd report, which argues for criminal prosecution of persons suspected of custodial torture, such as police officers, military personnel, and paramilitary personnel.
- To solve a case, top officers and the state place a great deal of undue stress on policemen operating at lower levels, and this inappropriate pressure causes police to resort to torture to obtain the truth or confession. This pressure is among the causes of incarceration torture. In *Prakash Singh v. Union of India* (2006), the Supreme Court instructed federal and state governments to guarantee that no undue pressure be placed on police. Pressure from the population in the current Hyderabad rape case resulted in the arrest of the perpetrator, which was celebrated; this must stop. In a democratic democracy, revenge is not a solution.
- Body cameras with GPS tracing and, perhaps, the ability to continuously record the wearer's temperature should be available to subordinated policemen. The cameras should be worn at all times, and relevant legal instructions should be established to govern the accused's security as well as administrative and legal case needs.
- CCTV cameras must be installed that are used in line only with detailed directions provided in the judgment of *Paramvir Singh Saini vs. Baljit Singh & Others SLP (Criminal) No. 3543 of 2020*. Hereby CCTV cameras should indeed cover all point of entry pathways of the police stations, including both consonance to the police station's legitimated illustration as well as in line with actual guideline known to exist therein, quite so to correlate the suspect's detention or other events with entries in daily diary/memos.
- Furthermore, there exists no necessity for current regulations if the Supreme Court's rulings, first among *Joginder Kumar v. State of Uttar Pradesh* (1994) 4 SCC and later in *D.K Bose v. State of West Bengal* AIR 1997 SC 610, are followed. In these cases, the rules regulating imprisonment, detention, and constitutional liberties are detailed. It also includes the installation of CCTV in prisons and police stations, and even the establishment of a State Human Rights Commission to supervise offenders and result in positive outcomes. Non-official visitors would perform warrantless searches of the facility. The mere sight and implementation of this by an unbiased administration throughout every level, directed by the Tribunal, is sufficient to put a stop to violence.
- The investigating officials should be given mobile phone numbers to utilise for inquiry and official reasons, which will be used to verify criminal case-related evidences in some situations by providing Call Datasets and Section 65B certifications to show electronic evidence gathered as such.
- Furthermore, current regulations and norms should be strictly enforced. The modification in the evidence legislation, which still places the burden of proof on the plaintiff, must be overturned.

- The media is crucial in raising awareness. People believe whatever the media portrays. As a result, it is the media's job to offer the citizen with relevant and suitable information. Media often paints an alleged offender as a criminal before the court's decision is rendered. The media must recognize and accept its role. Similarly, if people observe an individual being pummeling by cops, they assume that something has gone wrong. This thinking must shift. These attitudes lead police officers to believe that police are performing the right thing. This will also aid in the oversight of police and judicial.
- Reform efforts within the police force, like vicarious responsibility, will provide integrity, which is currently absent in the current police system. The police agency should create various sections, and postings, promotions, and transfers should take place solely inside those divisions. There is no cross-division transfers or promotions. As an example, while a large percentage of police officers conduct security work nowadays, they possess no knowledge how to handle a criminal proceedings. As a result, a distinct department for security post should be established, and transfers should take place solely inside the division.