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PREVALENCE OF CUSTODIAL VIOLENCE AND A NEED FOR PRISON REFORMATION IN INDIA

ABSTRACT: Custodial Violence has been one of the major concerns and challenges in India's criminal justice system which highlights the widespread abuse of power and lack of a proper justice providing mechanism and prison administration. Despite constitutional rights and other statutory safeguards protecting the human rights and dignity of a person, instances of sexual torture and assault, psychological harassment, and even custodial deaths, continue to persist in the society at a high level. This paper delves into the prevalence of custodial violence in India, establishing the nexus of brutality by the police, issues due to lack of accountability and hence, the requirement of a revolutionary prison reformation. While the constitutional safeguards, such as under Article 21 aims to prevent such violation of the law, their enforcement has always been inconsistent and subjective in nature. Although the judiciary has in several occasions intervened to protect the rights of the detainee and set guidelines for preventing such kind of abuse, its implementation in the real-life scenario is still quite insignificant. The paper further addresses the problem of torture and other forms of violence in detention, and it also emphasizes how urgently prison reform is needed to stop these forms of abuse. Apart from tackling the problem of violence in custody, the paper also emphasizes the pressing necessity of prison reform to stop torture and other forms of violence. It is important to deal with issues such as overcrowding in the jails, inadequate healthcare facilities for the inmates and for the lack of rehabilitative programs which are there in the prisons, often leading to a deteriorating mental and physical health and conditions for the inmates. Through reformation in the system, prisons can be transformed into rehabilitative centers, tendering to the rehabilitation while upholding the dignity and rights of the inmates which aids to the abidance of the principles of justice in our society, aiming not only toward deterrence of the inmates but also to rehabilitate them for a positive transformation within themselves.¹²³

KEY WORDS: Custody, Violence, Torture, Policies, Government

¹ Dr Ravi Shukla and Prashant Dubey, *Judiciary and Human Rights for Police Custodial Violence of Prisoners*, Volume-3 Issue-4 (2023), Shukla, R., & Dubey, P. (2023) 16-21.

² 67 Ram Phal Pawar, Sanjay Mathur & Dr. Prashun Gupta, *The Indian Police Journal* (2020).

³ Chatterjee, C., 2018. Life of a Prisoner: A Legal Study System and Its Reforms in India. *Indian JL & Just.*, 9, p.141.

STATEMENT OF PROBLEM: Violence against the prisoners indicates and is a proof of some serious deficiencies or gaps in the application of certain human rights and constitutional safeguards. The reports of torture in the prison, or abuse or neglect in the system of monitoring the inmates, points out the structural imbalances and problems, despite the number of safeguards available which is discussed in the paper to check on the actual implementation and abidance of them. The paper further discusses the need of a prison reformation and the shift of the perspective and outlook of the system from that of a “deterrence-driven” to a “rehabilitative approach”, prioritizing accountability and openness over punitive tactics.

RESEARCH OBJECTIVE: To upheld the constitutional, statutory, or legal rights and dignity of the prisoners and provide them with an atmosphere of growth and opportunity to transform, rather than only inflicting punishment.

RESEARCH METHODOLOGY: The methodology or the type of research that this paper uses is doctrinal research, i.e., research based on **available sources and articles**. A thorough analysis and critical thinking of the relevant materials available on the web have been done to provide an unbiased and correct point of view with respect to the chosen topic. The resources referred to for the purposes of writing this paper have been taken from relevant and legitimate websites and journals.

INTRODUCTION: Custodial Violence and Prison Reformation are two concepts or concerns in the criminal justice system, which goes hand in hand. Custodial abuse or torture is an issue prevalent in our society ever since the human existence, and the backdrop of it remains the cultural and class conflict, which further enhances the problem of it. The wide discretionary power which is rendered upon the authorities to monitor and control the inmates, leads to such a chaos and imbalance in the system, giving them an upper hand to treat them the way they want. To have a transparent mechanism which investigates every kind of human right being followed and adhered to, it is important to have a prison reformation in India, which allows the rights of the prisoners to be more easily enforceable and more accessible to them. There are various rights granted under the Constitution such as the Articles 20,21 and 22 which are very crucial to be applied and taken seriously when dealing with brutal atrocities and injustice towards the inmates. Hence, a good reformation in the legal system is very essential to have an unbiased and proper legal system.⁴⁵⁶

UNDERSTANDING CUSTODIAL VIOLENCE

Custodial Violence, in the eyes of law, encompasses both physical as well as the psychological forms of custodial abuse and torture inflicted upon the detainees under police or judicial custody per se. It may include any form of direct physical attacks or even psychological manipulation and extreme neglect, often leading to severe harm to them or even their death. Sometimes, the work pressure which an officer may face and on top of that, receiving low salaries for their work, adds onto such behaviour of

⁴ Dr Ishita Chatterjee, *CUSTODIAL VIOLENCE AND THE LAW*, 10 (2021).

⁵ Bandyopadhyay, M., 2007. Reform and everyday practice: Some issues of prison governance. *Contributions to Indian Sociology*, 41(3), pp.387-416.

⁶ Chatterjee, C., 2018. Life of a Prisoner: A Legal Study System and Its Reforms in India. *Indian JL & Just.*, 9, p.141.

them. Even the lack of training may also be one of the prime factors due to which the actual way of dealing with the inmates is not known in to the officers at large, and adding on to that if there is an intention of misusing the power granted to them, then there is no way of looking back to committing such acts. There is frequently a perception of impunity within law enforcement since cases of custodial violence are not sufficiently monitored or prosecuted. When mistreatment is referred to as "sustained interrogations," it promotes a culture in which brutality and degrading treatment are accepted in institutional settings. This weakens the public's confidence and trust in the legal system, when it comes to receiving justice with respect to such offences, especially when against the power which the authorities possess.⁷

CONSTITUTIONAL PROTECTIONS AVAILABLE AGAINST CUSTODIAL VIOLENCE

However, there are certain legal protections accessible to detainees under the Constitution, which assist them get the basic human and fundamental rights that they are entitled to. Important civil liberties are protected under Part III of the Indian Constitution, notably those guaranteed by Articles 20, 21, and 22, which are particularly important when discussing criminal law. Retrospective application of the criminal laws is prohibited under Article 20(1), which means that no one can be prosecuted for an act under a law that was not in effect at the time. Double jeopardy is prevented under Article 20(2) of the Constitution, which guarantees that any person cannot be tried twice for the same offence. The right against self-incrimination, guaranteed to every citizen by Article 20(3), permits the accused to preserve their silence free from compulsion or the suggestion of guilt.

No one shall be denied their right to life or personal liberty without due process, according to Article 21. As demonstrated by important rulings, it also suggests that prisoners will be shielded from violence and torture. For example, in *Dastagir v. State of Madras (1960)*⁸, the court deemed penalties involving torture unconstitutional. In a similar ruling, the Supreme Court laid emphasis on the unconstitutionality of harsh punishments in jails in *Inderjeet v. State of Uttar Pradesh (1979)*⁹. Certain important safeguards against custodial abuse are established by Article 22, which also introduces measures to prevent arbitrary detention and abuse of authority. These provisions lay down the importance of treating the inmates in a fair and lawful manner in the custody, and also safeguarding them against any kind of arbitrary detention: Article 22(1) further ensures the fact that the detainees are well aware of their rights such as the right to legal counsel, and Article 22(2) makes it mandatory to bring the detainee before the Magistrate within 24 hours of his/her arrest, in light of preventing any unlawful or prolonged custody.¹⁰

STATUTORY SAFEGUARDS AVAILABLE TO THE DETAINEES^{11,12}

⁷ Mrs Janhavi Mhatre & Dr Geeta Shrivastava, *An Evaluative Study Upon the Problems and Perspectives of Custodial Violence In India*, 18, Number 6 (2021).

⁸ 1960 SCR (3) 116

⁹ 1980 SCR (1) 255

¹⁰ Dr Ishita Chatterjee, *CUSTODIAL VIOLENCE AND THE LAW*, 10 (2021).

¹¹ Dr. Kiran R Naik, *The Problems of Prisoners: An Analysis*, 6 (2019).

¹² Yadav, A., 2015. Prisoners' Rights in India: An Analysis of Legal Framework. *Indian JL & Just.*, 6, p.131.

In India, several statutes highlight the provisions available to the inmates for their protection against any sort of torture or custodial violence, ensuring for them a humane and justified treatment for them within the bars. The key statutes present are:

1. **Bharatiya Sakshya Adhiniyam of 2023**

The Bharatiya Sakshya Adhiniyam, 2023, a revamped version of the Indian Evidence Act of 1872, included modernized sections addressing issues such as digital evidence, custodial violence, and coercion. This Act aims to modernize India's evidentiary framework in response to technology improvements and changing legal needs.

The Bharatiya Sakshya Adhiniyam addresses the treatment of forceful confessions and evidence obtained under duress, which is especially pertinent to custodial violence. For example, under Section 22, confessions obtained through coercion, inducement, or threats are deemed inadmissible. This is consistent with the prohibition against custodial torture, as any confession taken under duress cannot be used as acceptable evidence. Furthermore, electronic, and digital records are accorded identical legal weight as traditional documents (Section 57), allowing courts to treat digital evidence with due process.

Furthermore, the Act includes procedures to ensure that confessions involving co-accused are carefully investigated to avoid false convictions owing to compelled admissions. The amended regulations lay emphasize on fair trial standards and include specific and clear measures to increase evidence admissibility, especially in cases involving custodial violation and other social justice problems.

These changes to the Bharatiya Sakshya Adhiniyam represent a trend towards a more robust evidentiary process that recognizes the hazards of custodial abuse and the importance of high standards in evidence collecting and admission in criminal prosecutions.

2. **Bharatiya Nyaya Sanhita of 2023**

The Body of National Standards (BNS) might be a hypothetical framework aimed at ensuring the humane treatment of inmates through certain procedural safeguards, like those established in the Code of Criminal Procedure (CrPC) 1973. These safeguards may appear within such a national standards framework:

Right to Information upon Arrest (Section 50)

The BNS requires the authorities to let the detainees know the reason behind their detention and outlines to them, any available rights for them as well such as the right to get bail, ensuring a complete transparency and reducing the trauma and distress which the detainees go through.

Right to Immediate Notification (Sec 50 A)

Under the BNS, the prisoners would have the right to inform their family members or friends or any other reliable person of their arrest. This will ensure the that at least someone other than the detainee will be aware of the arrest, adding on an external layer of accountability.

Mandatory Medical Examination (Sec 54)

Under the BNS, the detainees can request for a medical examination of them at any point of time, and it is mandatory upon the authorities to fulfil this request of the detainee, to have a record of the detainee's health record. This acts as a preventive and precautionary measure against custodial violence and abuse, enabling quick detection of any sort of injuries or health issues which the detainee might have sustained during the detention period.

Safeguards for Transfer of Custody (Sec 55)

Under BNS, when a custody of the detainee is transferred between one official to another, strict protocols, including even written records of the purpose of the transfer and the new custodian's information. This provision helps to maintain certain transparency by making it further more difficult and troublesome to shift the detainees without foresight or any accountability.

Timely Production before Judicial Authority (Sec 57)

The BNS mandates the requirement of the detainee to be presented before a judicial authority within 24 hours of his/her arrest, excluding the travel time. This safeguard ensures legality of the arrest and reducing the risk of the unlawful confinement, by a proper and timely review of the same.

These protections under the BNS functions as a national framework to uphold detainee rights and prevent custodial violence in all manner, to uphold the right of the detainee and prevent custodial violence, emphasizing on accountability towards the police person, ensuring transparency in the system and thus, ensuring humane treatment throughout the detention process.

3. Bharatiya Sakshya Adhinyam of 2023

Under a Body of Standards for Admissibility (BSA) framework, a similar provision as to that of Sec 24 of the Indian Evidence Act of 1872 is Sec 12 of the Bharatiya Sakshya Adhinyam of 2023. Sec 12 of the BSA would similarly focus on protecting the admissibility of confessions by mandating that they can be made voluntary, free from inducement, threat, or promise. Thus, Sec 12 of BSA would make any of the confession made under any kind of pressure or undue influence admissible in court, hence protecting the detainees from being incriminated by themselves, through intimidation or custodial violence. This section would ensure the maintenance of fairness in collection of evidence and protection of the rights of those in custody.

4. The Protection of Human Rights Act of 1993

The Protection of Human Rights Act of 1993 led to the establishment of the National Human Rights Commission (NHRC), playing a crucial role in investigating the cases reported of custodial violence, giving suggestions for police and prison reforms.

5. The Prison Act of 1894

This legislation lays emphasis on the overall welfare of the inmates, ensuring and mandating the proper and appropriate treatment of prisoners, including certain provisions for the checkup of their health, care taken for the maintenance of a hygienic environment for them and ensuring their safety.

It thus, outlines the duties and responsibilities that the prison officials are bound to follow in ensuring no unfair treatment is done towards the inmates.

6. Juvenile Justice (Care and Protection of Children) Act of 2015

The Act protects the minors who are in conflict with the law ensuring their deterrence in juvenile centres and not prisons, shielded from the abusive treatment. It mandates a very age-friendly approach in handling the juvenile offenders in India, where emphasize is laid on the rehabilitation of the juvenile offenders rather than punishment.

7. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989

This Act contains provisions which aims at preventing custodial violence and atrocities at large, against individuals from the Scheduled Castes or Scheduled Tribes, who are supposedly more vulnerable to such kind of abuse by the authorities.

JUDICIAL ANALYSIS OF CUSTODIAL VIOLENCE**DK BASU VS STATE OF WEST BENGAL¹³**

The case of *DK Basu vs State of West Bengal (1997)* further emphasized and laid down certain important guidelines for the treatment of prisoners in police custody, with an objective of preventing custodial violence in India. With the death of a young man named Dharmraj Basu, the importance and need for a compulsive and strict adherence to certain human rights norms were highlighted, within the Indian police system. The guidelines which were highlighted were:

1. Compulsory registration of an FIR
2. Right to seek a counsel
3. Information to relatives of the accused
4. A compulsory medical examination of the accused in the case, within 48 hours of arrest
5. Right to be appear before a Magistrate, within 24 hours following arrest
6. No torture to be inflicted
7. Protect against custodial violence
8. Training and spread of awareness amongst police officers.

The primary goal of these guidelines was to maintain the ideals of natural justice, human rights, and accountability in the society which ensures that the enforcement of such law happens within the boundaries and with adherence and compliance to the Constitution, respecting the dignity of every individual and the democratic nature of the nation. It has been quite important in the shaping of legal standards and practices with respect to arrests and custodial treatment in India of the inmates, which further puts forth a question for the need of a good and appropriate reformation in the criminal justice system of our country.

¹³ AIR 1997 SUPREME COURT 610

MANEKA GANDHI VS UNION OF INDIA¹⁴¹⁵

The judiciary has played a very crucial and significant role in the promotion of the idea of prison reformation in India. One of the main judgements delivered by them was the Maneka Gandhi case in which the Supreme Court widened the scope of Article 21 of the Constitution of India, further upholding the fundamental rights such as the right to life, with human dignity of the inmates which cannot be suspended even during the emergency period. The Maneka Gandhi judgment laid down that an individual's personal liberty cannot be limited or restricted without any kind appropriate legal procedure. This decision was a turning point in recognizing that prisoners, despite being restricted by court order, have the right to appeal. Furthermore, under Article 21, they have the right to legal advice to assist them in preparing and presenting their appeals.

CHANGE IN THE PERCEPTION OF THE TERM "JUSTICE"

Over the last century in our country, the goal of imprisonment has shifted from that of a simple deterrence or punishment to a dual focus on punishment and reformation. Many states have given up on giving brutal punishments, encouraging good behaviour and for providing a variety of rehabilitative incentives than punitive measures, including educational programs, vocational training, and improved living situations. Despite these achievements, challenges such as overcrowding in the society, particularly among undertrial prisoners in India, persist. There remains a big gap between the reform policies that are framed for the purpose of curbing such violences, and its practical implementation in the real life. It is the duty of the prison staff to uphold the dignity of the procedure and not take and not take any undue advantage of the informal power structure, in any way. The judiciary, again in the case of *Sunil Batra vs Delhi Administration*¹⁶, the Supreme Court condemned solitary confinement practices and call for human dignity in treatment of the prisoners. Additionally, *M.H. Wadanrao Hoskot vs State of Maharashtra*¹⁷, laid down the importance of legal aid as a part of fair trial rights.¹⁸¹⁹

COMMITTEE REPORTS AND RECENT NCRB RECORDS

The Reports by committees like that of the Mulla Committee and the Krishna Iyer Committee, which further emphasized the importance of prison reform, to ensure proper rehabilitation-aimed corrections, mainly for the marginalized segment of the society, like juveniles and even women. These guidelines promote the idea that prisons should encourage social reintegration by providing fair treatment, skill development, and job opportunities for inmates. Further, these safeguards constitute an emerging acknowledgment of prisoner rights in India's legal context, encouraging both reformation

¹⁴ 1978 SCR (2) 621

¹⁵ Interrelationship Between Procedure Established by Law And Due Process Of Law In India, <https://legalserviceindia.com/legal/article-7983-interrelationship-between-procedure-established-by-law-and-due-process-of-law-in-india.html>

¹⁶ 1980 SCR (2) 557

¹⁷ 1979 SCR (1) 192

¹⁸ 58:1 K.I. Vibhute , Right to Human Dignity of Convict under "Shadow of Death" and Freedoms "Behind the Bars" in India: A Reflective Perception

¹⁹ Pratyay Amrit et al., Prisoner's Rights and Prison Reform in India: A Legal Critique (2022), Amrit, P., Jaiswal, A., Uniyal, V., Jha, R. S., & Srivastava, A. (2022).

and humane treatment, however implementation issues persist across jails due to resource and administrative constraints.

According to the NCRB Reports, although there have been not been many cases of death due to custodial violence, there have several cases registered against State Police Personnel in various states, such as 704, 227 and 221 under the State of Jammu & Kashmir, Rajasthan, and Andhra Pradesh, being the highest number among them. Custodial violence and torture are one of the major reasons for the reporting of those cases and in most of the case, the undertrial prisoners are from a lower stratum of the society, unaware of their rights and privileges.²⁰

CONCLUSION: As per all the research done and findings noted, it can be said that the effectiveness of the various laws and rights are not only ensuring a considerable reduction in such cases involving custodial violence, but also bringing a change in the perspective of the people regarding the accurate form of justice. The approach of the judiciary also is changing towards the granting of a very strict punishment, and is more in ensuring the rehabilitation and an opportunity of correcting themselves, which is definitely a very positive sign. There should always be a balance between deterrence and reformation and that is what is the most crucial and significant factor for growth and development of any individual, and indirectly, of any society or nation. Whenever and wherever, that is us ensured, the society is bound to succeed and the outlook and focus of the nation is going to be only on the positive side of every individual and not the negative, unless the negative overshadows the rest so much as to not leave any option but to take bold decisions of deterrence for their correction.

SUGGESTIONS: Preventing custodial violence and modernizing prisons in India necessitates a multifaceted approach that includes law changes, systemic improvements, training, and external oversight. Some key suggestions for it are:

1. Strengthening the legal reforms available and ensuring accountability by ratification of UN Convention against Torture, which would help creating certain international pressure and help in establishing certain binding standards upon them, for preventing custodial violence. Having specific Anti-Torture Legislation which India lacks as of now, will also be very helpful in criminalizing such kind of behaviour and torture upon the inmates.
2. Regular inspections by the Judiciary on such matters, in a periodic manner would ensure that the rights of the prisoners and their access to basic human rights such as hygiene and human treatment, while their custody would be present.
3. Setting up of Fast Track courts for dealing with cases pertaining to custodial violence, would ensure timely and a fair justice for the, serving as a deterrent.
4. Addressing overcrowding, i.e., lack of space by promoting non-custodial kind of sentences like probation or community services helps in reducing the number of inmates, contributing to a better environment for the prisoners and a better control mechanism for the authorities as well.
5. By providing adequate and regular trainings to the authorities and use of appropriate and up to date technology in monitoring the interrogation, such as CCTV cameras or other measures for continuous observance of the entire area.

²⁰ <https://www.ncrb.gov.in/>

6. By spreading public awareness programs and providing reintegration or community-based programs for the released prisoners, also acts as a great support to the former inmates and further encouraging them to mould their lives and not commit any offence henceforth.