

AN ANALYTICAL STUDY UPON THE CUSTODIAL TORTURE LEADING TO VIOLATION OF CONSTITUTIONAL RIGHTS WITH REFERENCE TO THE STATE OF MAHARASHTRA

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ABSTRACT

Custodial torture is universally held as one of the cruelest forms of human rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC), and the United Nations strongly condemn it. However, the law enforcement authorities across the country defy these institutions in utter disregard to the basic fundamental rights of an individual embodied in the 'Constitution of India'. Therefore, there is an urgent need to strike a balance between individual human rights and societal interests in combating crime by using a realistic approach. The objectives defined in the paper highlight to discuss the magnitude of torture committed under judicial custody and "Police Custody, to analyze the statistical figure of custodial violence within the jurisdiction of Maharashtra, and to evaluate the legal interventions available against custodial torture. With the help of a questionnaire, research has been more clearly defined. The methodological approach used is the primary research method. The systematic qualitative technique has been integrated into the study design. The researcher here has applied positivist research theory to arrive at conclusions that are true to the data obtained. The corrective techniques assist the researcher in providing recommendations for future performance management demands which will further boost future research performance. The critical analysis leads to the result that Custodial brutality or mistreatment is a flagrant misuse of legitimate power in an underhanded manner by the law enforcement authorities most commonly used against oppressed, destitute, and the uninfluential.

Keywords: Custodial torture, police, violence, torture, human rights

1. Introduction

In a democratic country like India which is governed by the rule of law, incidences of custodial violence raise a great concern from all corners of the society. Torture is an injury in the spirit that is extremely serious that one can almost feel it, yet it is additionally elusive that it can't be mended. Articles 20, 21, and 22 of the Indian Constitution offer explicit rights to a detainee or an individual in confinement. The Supreme Court of India has seen few rights as an inborn component of Article 21 of the Constitution, for example, the rights against handcuffing, the fair and speedy trial, free legal assistance, etc. Custodial violence is causing far-reaching stress in the public eye¹.

1.1 Background

Torture in custody, representing a variety of 'sorts of violence' to murder by policemen to extort admissions and attribution of evidence, is widely prevalent. In the context of the broadening concept of 'humane' treatment of

offenders, such an approach of inquiry and intrusion detection of a violent act not just disregards a person's basic rights but instead erodes his civility². Brutality and the use of third-degree processes on potential suspects during unlawful detainment and local police remand set an epithet upon the administrative structure in India, wherein the judiciary is intrinsic across every act and the human rights and fundamental freedom are esteemed basic rights festooning the largest spot across all basic vital privileges. Torture persists in India, which is a conundrum. Its because India is a democratic nation with quite publicly articulated statutory and constitutional anti-torture measures that are continually being created and enforced by an independent and strong Judiciary³. Torture in detention is often regarded among the most heinous type of human rights violations. It is prohibited under the Indian Constitution, National Human

¹ Kamasai, S. V. M. "Judicial Dynamism and Custodial Violence." *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 12.12 (2021): 547-551.

² Chauhan, Preeti. "Making the 'Invisible' visible: Custodial violence and the civil liberties-democratic rights movement in India." *International Journal of Law, Crime and Justice* 62 (2020): 100375.

³ Nanavati, H. (2020). A STUDY ON CUSTODIAL TORTURE AND THEIR RIGHTS.

Rights Commission (NHRC), Supreme Court, United Nations, and other International Covenants and its Protocols.

1.2 Literature Review

The word 'custodial' refers to someone who provides security, custody, control, or protection. 'Violence' refers to any action that causes devastation, anguish, or misery. violence and torturing of a person or group of people when in judicial or police custody, is the basic sense of the phrase "Custodial Violence." Custodial violence tends to assault the suspect or give the suspect a dreadful experience⁴. It is a lifetime scar in the minds of the tortured which cannot be erased even after victim compensation.

Section 167 of the CrPC distinguishes between two forms of custody: police custody and judicial custody. Violence in police custody happens when officers abuse the suspect and subject themselves to prolong questioning to derive confessions, retrieve any property or elicit some information. There are few controls in place to guarantee that the individual in custody has prompt recourse to his counsel, a log of his confinement, and a competent medical checkup⁵. Violence in pretrial detention is the form of violence that is commonly observed in jails or detention camps when the abuse is perpetrated by prisoner groups with unfettered ability to commit heinous atrocities. Innocent captives are captured by these groups and assaulted when they do not show loyalty to them. The victim is pushed to attempt suicide as a result of this type of assault.

As per the socio-legal study conducted in 2019, there were around 1700 custodial fatalities in India. 1606 individuals died in judicial Custody while 125 in police custody, implying that one person dies every five minutes⁶.

The United Nations Convention Against Torture (UNCAT), which requires states to observe and hold torturers responsible, was accepted in 1997 by India. Several

constitutional and administrative measures cover custodial brutality and torture, notably Article 20, 21, 22 of the Constitution, sections 330 and 331 of the Indian Penal Code (IPC), and sections 25, 26, and 27 of the Indian Evidence Act 1872. These protections although in place are hardly implemented in true letter and spirit and judged to be insufficient⁷.

According to the National Crime Record Bureau, Over the previous two decades, there have been 1,888 documented custody fatalities across the country, 893 complaints have been filed against police officers, and 358 individuals charge-sheeted. However, according to official statistics, just 26 police officers were convicted throughout this time period⁸. 591 incidents of mortality in police and Judicial Custody was registered between 2010 and 2015, with the causes of death indicated as suicide, death while hospitalization, or lingering death due to disease. According to NCRB statistics, police custody deaths in 2019 and 2020 were 85 and 76, respectively, although NHRC records for the same years reported 117 and at least 83 deaths. "One likely explanation is the lack of an uniform classification and categorization of police custody deaths."⁹. More than one-fifth (21.5 %) of these fatal cases are from Maharashtra, with Andhra Pradesh (13 %) and Gujarat following closely behind (11%)¹⁰. In the year 2021, there have been 151 documented custodial deaths in India¹¹.

⁷ The Indian Penal Code: New Amendments. N.p., Sakha Global Books (Sakha Books), 2020.

⁸ Harikishan Sharma, "1,888 custodial deaths in 20 years, only 26 policemen convicted." (2021). <https://indianexpress.com/article/india/custodial-deaths-policemen-convicted-7624657/>

⁹ Malavika Murali, "151 inmates died in police custody this year: Govt." Hindustan Times. (2022). <https://www.hindustantimes.com/india-news/151-inmates-have-died-in-police-custody-in-2021-govt-101638336939995.html#:~:text=There%20is%20a%20mismatch%20in,compared%20to%2085%20in%202019.>

¹⁰ Raja Bagga, "60% custodial deaths within 24 hrs of arrest; most in Maharashtra, Gujarat." Business Standard. https://www.business-standard.com/article/current-affairs/60-custodial-deaths-within-24-hrs-of-arrest-most-in-maharashtra-gujarat-120102600115_1.html

¹¹ Chatterjee, Ishita. "CUSTODIAL VIOLENCE AND THE LAW."

⁴ <https://ncrb.gov.in/hi>

⁵ Seri, G., & Lokaneeta, J. (2018). Police as state: Governing citizenship through violence. In *Police abuse in contemporary democracies* (pp. 55-80). Palgrave Macmillan, Cham.

⁶ Haider, Kulsum. "A Socio-Legal Study of Custodial Violence in India." (2021): 1-28.

According to the 7th Schedule of the Indian Constitution, police and government security are federal issues. It is essentially the obligation of the provincial government in question to prohibit and guarantee that policeman atrocities do not occur, and uphold the constitutional rights of its citizens¹².

1.3 Research Gap

The purpose of this article is to fill a research vacuum discovered in earlier studies by examining the current trend in the fast-growing incidence of Custodial violence and deaths in Maharashtra, India. The study indicates the pervasiveness of terrible occurrences of torture and abuse in detention.

1.4 Research Question

- I. What is the magnitude of torture held under judicial custody and police custody?
- II. What is a statistical figure of custodial violence within Maharashtra's jurisdiction?
- III. What are the legal interventions available for custodial torture and violence?

1.5 Importance of the Study

The research paper presented is critical because it demonstrates the lack of political leadership, political pressure, stress, corruption, ignorance of human rights laws and lack of aggressive and repetitive training, civil rights professional training of police units, a dearth of laws and policies to indict police forces for perpetrating custodial violence, along with discrimination and prejudice together across tribe, caste, and socio-economic status, all of which are key contributors to the malady of custodial torture¹³.

1.6 Research Objectives

- I. To demonstrate the enormity of torture held under police and judicial custody in Maharashtra

- II. To dissect the factual figure of custodial torture in Maharashtra.
- III. To assess the lawful intercessions accessible for custodial torture.

1.7 Research Hypothesis

H0: There is no governmental containment of the menace of custodial violence in legal terms.
H1: There is appropriate governmental containment of the menace of custodial violence in legal terms.

1.8 Scope and Limitation

The scope of the research project is confined to custodial torture within the state of Maharashtra. The article will be limited to analyzing the key consequences for any policy development on incarceration, violence, and torture.

2. Research Methodology

2.1 Research Method & Design

The study approach used is mainly due to the wide range of sample requirements. Initially, a one-on-one interview was planned with the jail prisoners, but owing to covid regulations personal meeting with the inmates could not be materialized. Therefore, a questionnaire method was resorted to elicit the responses. Before the circulation of the questionnaire, the same was vetted through email by experienced authorities from the Law Department of Mumbai, Judges, police officials, and advocates. A systematic qualitative technique has been integrated into the study design. The researcher addresses the study objectives with a logical explanation and has no personal bias while arriving at research findings¹⁴. In layman's words, the researcher here has applied positivist research theory to arrive at conclusions that are true to the data obtained.

2.2 Research Approach

The descriptive study is carried out using qualitative research methodologies, whereas the explanatory approach explains depending on the specific topic presented by the researcher. The researcher might create a cause-and-effect link between the research question and the hypothesis developed

¹² Assembly of India, Constituent. The Constitution of India: Bare Act. N.p., Independently Published, 2020.

¹³ Kamasai, S. V. M. "Judicial Dynamism and Custodial Violence." *Turkish Journal of Computer and Mathematics Education (TURCOMAT)* 12.12 (2021): 547-551.

¹⁴ Pandey, Prabhat, and Meenu Mishra Pandey. "Research Methodology Tools and Techniques." (2021).

throughout the explanatory technique¹⁵. A typical study comprises the acquisition of empirical data for the creation of hypotheses or less pompous hunches, followed by the testing of these hypotheses using any of the various methods available to the researcher. The corrective techniques assist the researcher in making recommendations for future performance management demands that will boost the research performance.

3. Analysis of Study

To discuss the magnitude of torture held under judicial custody and police custody in Maharashtra.

In the landmark judgment of the Supreme Court in *DK Basu v. State of West Bengal*¹⁶, it was determined that custodial violence, as well as any kind of mistreatment or cruel, outrageous, or humiliating treatment, are prohibited under Article 21 of the Indian Constitution. Therefore, this case set the precedent by defining few guidelines as rights of an arrestee to be followed by every policeman before arresting any individual for; alternatively, additional offenses would be met with accusations of justice. It protects all persons by implementing legal procedures that prevent any infringement of a person's freedom while incarcerated¹⁷.

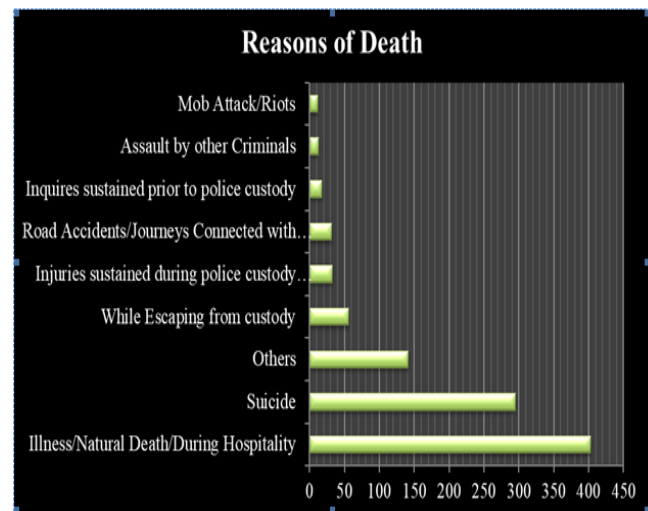


Figure 1 Graph representing the reasons of death of detainee during police or judicial custody

The Hon'ble Supreme Court took notice of these results while denouncing police custody assault in the instances of *Raghubir Singh v. State of Haryana*¹⁸ and *Shakila Abdul Gafar Khan (Smt.) v. Vasant Raghunath Dhoble and Anr*¹⁹. This was also stated that "no one will be tortured or tortured to cruel, barbaric, or inhumane or degraded behavior." After this solemn declaration, the crime remains, denying the reality that every industrial nation displays worry about it and attempts to eliminate it. According to the preceding case study, custodial violence generally relates to aggression in police and Judicial Custody. Underneath the cover of inquiry and questioning, correctional personnel conducts an act of violence against the people in their care²⁰. The egregiousness of such a violation is done against an individual by the exact person who is regarded as the citizens' guard. It is perpetrated behind the barrier of uniform with a control behind the four walls of a police precinct, a sequestered facility, or a detention center, with prisoners completely powerless in these conditions. Custodial authorities have a

¹⁵ Kumar, Ranjit. *Research methodology: A step-by-step guide for beginners*. Sage, 2018.

¹⁶ AIR 1997 SC 610.

¹⁷ Shah, Prejal. *Suspects' Rights in India: Comparative Law and the Right to Legal Assistance as Drivers for Reform*. India, Taylor & Francis, 2021.

¹⁸ 1980 AIR 1087 1980 SCR (3) 277 1980 SCC (3) 70 ACT

¹⁹ 2004 ACJ 1246 : AIR 2003 SC 4567 : 2003 AIR(SCW) 5343 : 2004 (1) Bom.C.R.(Cri.) 13 : 2003 (4) Crimes 106 : 2003 CriLJ 4548 : 2003 (Supp.2) JT 282 : 2003 (7) Scale 213 : 2003 (7) SCC 749 : 2003 SCC(Cri) 1918 : 2003 (6) Supreme 748

²⁰ Surinder Kokiloo., Smt. Shakila Abdul Gafar Khan V. Vasant Raghunath Dhoble And Anr, India | Asian Encyclopedia of Law, 2020

far higher likelihood of inflicting violence on those in their care than any type of violence. The key reason is that sufferers of such assault are voiceless and helpless to denounce it. Custodial officials exploit their legal standing to alter testimony against themselves. Violence in custody is often not recorded on the lock records, and indeed the authorities take every opportunity to bury the evidence²¹. Due to fraternal bonds, every accusation of torture is ignored. There is no decisive evidence backing up the charge of cruelty or causing distress fatal because the custodial lock-up in which broadly violence or physical harm is exacerbated is away from social view, and the testimonies either are law enforcement officers or co-prisoners who've been extremely hesitant to show up as potential witnesses due to retaliation by a direct superior.

To analyze the statistical figure of custodial violence within Maharashtra's jurisdiction.

In the first half of 2021, 1,067 individuals died in custody as per the National Human Rights Commission. In March, the most mortality in police custody, about 263, was reported. According to the National Human Rights Commission (NHRC), the data of cases recorded concerning fatalities in police custody for the year 2020, More than one-fifth (21.5%) of these fatalities were recorded in Maharashtra²². The federal government must guarantee that police atrocities do not transpire and that people's human rights are protected. However, according to statistics supplied by the Ministry of Home Affairs (MHA) in answer to a query in the Lok Sabha, there had been 400 judicial fatalities and three police custody deaths in 2019. Uttar Pradesh led the nation in custodial fatalities, with 8 police custody deaths (PCD) and 443 judicial custodial deaths (JCD) in 2020-21. For the year 2021, Gujarat had 82 JCD and 17 PCD, Madhya Pradesh had 155 JCD and 8 PCD, Bihar had 156 JCD and 3 PCD, Maharashtra

had 130 JCD and 13 PCD, Haryana had 46 JCD and 3 PCD, and Punjab had 70 JCD and 2 PCD²³.

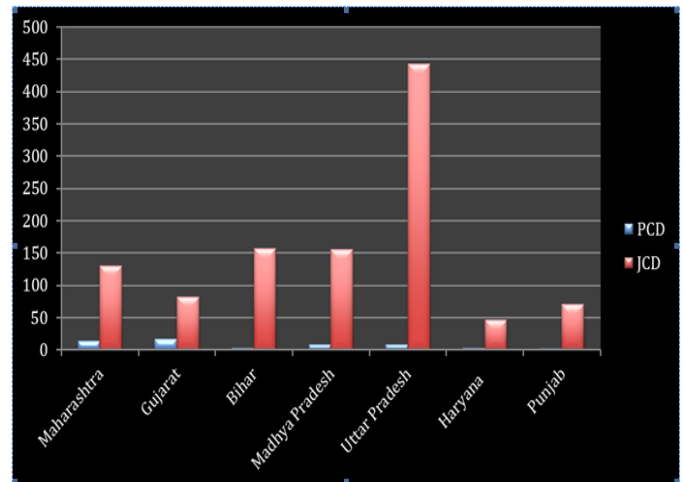


Figure 2 state-wise custodial deaths

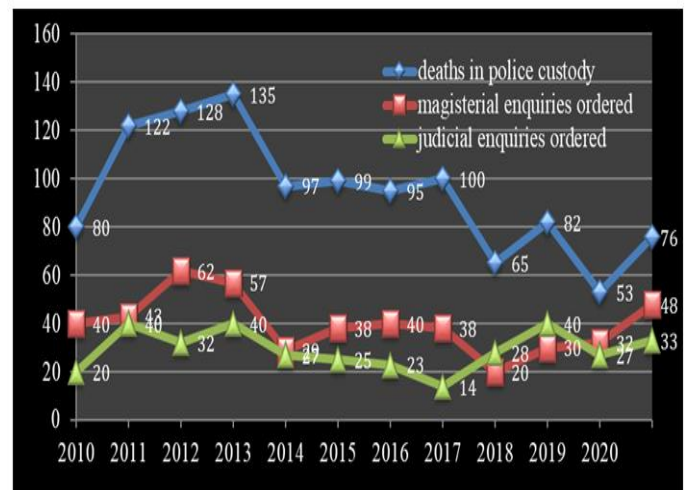


Figure 3 Custodial death report and inquiry orders from 2010-2020

From the custodial violence recorded from 2010 to 2020, it has seen that in all 80 suspects or detainees died in police custody, which increased to 135 by 2013. By the year 2020, the number reduced to 76. Conversely, for these many deaths, the magistrate enquires ordered for the year 2010 was 40 enquires, this figure has increased to 48 enquire orders by 2020. Likewise, judicial inquires ordered in the year 2010, was 20, which progressed to 33 by 2020. Thus it is seen that though the deaths in

²¹ Aston, Joshua N. *Torture Behind Bars: Role of the Police Force in India*. Oxford University Press, 2020.

²² Raja Bagga, "60% custodial deaths within 24 hrs of arrest; most in Maharashtra, Gujarat." *Business Standard*. https://www.business-standard.com/article/current-affairs/60-custodial-deaths-within-24-hrs-of-arrest-most-in-maharashtra-gujarat-120102600115_1.html

²³ Taruni Gandhi, *Custodial deaths in India: Uttar Pradesh tops the list*, *The Daily Guardian*, 2021. <https://thedailyguardian.com/custodial-deaths-in-india-uttar-pradesh-tops-the-list/>

police custody have reduced over the period of years, the judiciary has taken cognizance of this and there is an increasing trend in the figures in which magistral/ judicial enquiries were seen ordered.

"According to the 7th Schedule of the Indian Constitution, police and government harmony are state matters." It is essentially the obligation of the provincial government in question to prohibit and guarantee that police atrocity does not transpire, and to defend citizens' rights. In the *Gopal S/O. Ramdas Shetye vs The State Of Maharashtra*²⁴ on 5 May 2017, the appellant has challenged the Court's writ jurisdiction by Article 226 of the Indian Constitution, as well as its innate authorities under Section 482 of the Criminal procedure Code²⁵. The complainant's main request has been that respondent no.1 pay a portion of Rs.200 crores in remuneration for trashing the claimant's life through his unlawful arrest, detainment, and unjustified captivity for 7 years, although he is not mainly accountable for the commission of the crime for which he has been levied.

"In the perspective of this, the Central Government does not interfere unilaterally in instances of custodial fatalities, emphasizing that custodial fatalities or breaches implicating state troopers and jail officials also fell under the authority of state legislatures. The NHRC has given standards and suggestions for states to comply in all circumstances of in-custody fatalities²⁶. In 1993, the Commission published broad directions requiring that every custody fatality be reported to the Commission within 24 hours of its happening, accompanied by Post-mortem Records, Magisterial Official inquiry Reports/Post-mortem videography findings, and so forth within 2 months after the occurrence in a new prescribed format developed by the Commission and distributed to all relevant authorities. Furthermore, in every event of a custodial fatality, a Magisterial

Investigation must be conducted as instructed by the Commission, finished as soon as feasible and in such a manner that perhaps the findings is also made public within the two-month timeframe²⁷.

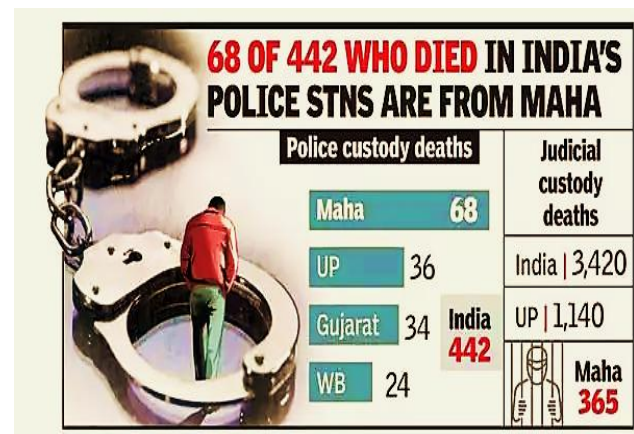


Figure 4: Source: Maharashtra tops in custody deaths 3 years after SC's prevention order. Times of India.²⁸

To evaluate the legal interventions available for custodial torture and violence.

The Indian Constitution and judicial system include several measures to combat torture. Ex-Post Facto Protection is available against conviction or augmented punitive measures: Article 20(1) of the Indian Constitution says that no one must be falsely accused of any infraction besides a contravention in effect on the date of the commencement of the act billed as a criminal offense, nor must therefore any individual be confined toward any higher sanction than of which may be perpetrated underneath the legislation in power at the time of the offense committed²⁹.

Preservation against Double Jeopardy: According to Article 20(2) of the Constitution, nobody should be prosecuted and jailed for the same offence twice. Responsibility to be not subpoenaed to testify against oneself: Article

²⁷ Jawale, S. M., S. S. Bhise, and R. R. Wagh. "Custodial deaths: a retrospective study in Mumbai region." *IJHRMLP* (2020): 54.

²⁸ Prafulla Marpakwar, (2019). Maharashtra tops in custody deaths 3 years after SC's prevention order. Times of India. <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-tops-in-custody-deaths-3-years-after-scs-prevention-order/articleshow/67733904.cms>

²⁹ Basu, Durga Das. *Commentary on the Constitution of India*. India, LexisNexis, 2019.

²⁴ rpa 1/88 cr. wp-3960-15 <https://indiankanoon.org/doc/60448960/>

²⁵ Alagan, Srimurugan. *The Criminal Procedure Code: A Commentary : with Appellate Practice and Procedure*. Malaysia, Sweet & Maxwell, 2018.

²⁶ State Power and the Legal Regulation of Evil. United States, Brill, 2020.

20(3) of the Constitution states how no alleged perpetrator would be forced to testify against himself. This is critical because it serves as a protection when compulsion and cruelty have been used to gather evidence from the suspect. Surprisingly, under Section 179 of the IPC, everyone is lawfully obligated to speak the truth to a public official on any issue. Section 161 of the 1973 Code of Criminal Procedure also allows the police to question the accused during an inquiry³⁰.

Sections 330, 331, and 348 of the IPC; Sections 24, 25 and 26 of the Indian Evidence Act; and Section

76 and 176 of the CrPC were designed to limit police officers' use of torture to gain confessions and other information.

Other directions entailed instructing Human Rights Commission to act as Supreme Court's sense of sight, establishing Human Rights Courts within Section 30 of The Protection of Human Rights Act (1993), installing CCTVS in jails, and allowing Government officials to conduct unannounced inspections in jails and police stations³¹. Other significant decisions depended on by the DK Basu Judgements include '*Joginder Kumar vs. State of UP (1994)*³²', '*Nilabati Behera vs. State of Orissa (1993)*³³', and '*State of MP vs. Shyamsundar Trivedi (1995)*³⁴'. The judiciary took cognizance of custodial fatalities that occurred in all of these situations.

The Hon'ble Supreme court in '*Rudul Shah v/s State of Bihar*³⁵', wherein the under trial Rudul Shah was illegally detained in Judicial Custody for 14 yrs was set free after a Writ of Habeas corpus was filed under Article 32 of the Indian Constitution. The SC for the first time realized that if any state violates the Constitutional rights of any person, then that person is entitled

³⁰ The Code of Criminal Procedure, 1973: As Amended by the Jammu and Kashmir Reorganisation Act, 2019 (Act No. 34 of 2019), dated 09-08-2019. N.p., Current Publications, 2020.

³¹ 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.

³² 1994 AIR 1349, 1994 SCC (4) 260

³³ AIR 1993 SC 1960

³⁴ 4 SCC 262

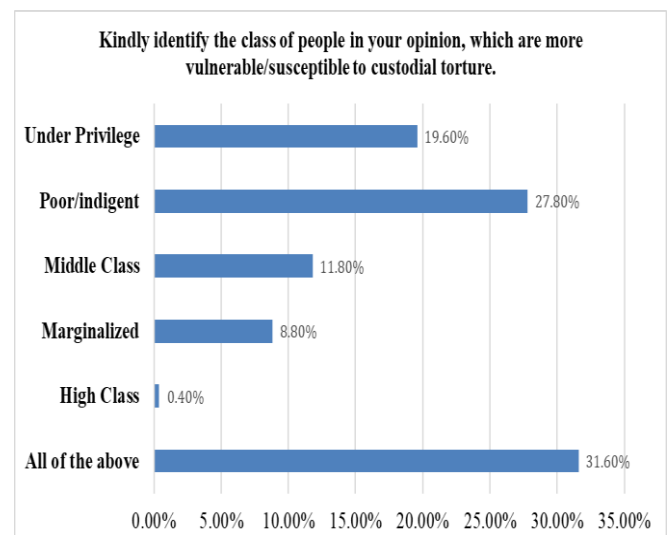
³⁵ (1983) 4 SCC 141

to compensation. In another case **Saheli v/s Commissioner of Police Delhi**, the compensation was awarded to the petitioner of Rs 75000 with the option given to Delhi Commissioner to recover the amount from the police officer responsible for the mishap. Also in another case about **Nilabati Behara v/s State of Orissa**³⁶, the petitioner was awarded a compensation of Rs. 1.55 Lakhs and ruled that it is the state's responsibility to provide compensation and not that of police officers. In **Joginder Singh v/s State of Bihar**³⁷, the SC ruled that if there is an arrest or detention without any justification it would be termed illegal. Mere having the power to arrest with the police is not self-sufficient, there must be a reasonable justification for arresting or detaining a person. Despite the guidelines stipulated under **DSK Basu**³⁸ and **Sheela Barse case**³⁹, cases of custodial violence are rampant and on a rise.

Research Hypothesis

H0: There is no governmental containment of the menace of custodial violence in legal terms.

As per the hypothesis, the below-mentioned graphs have been represented with the help of Data collected through primary data collection. The hypothesis demonstration has been presented as below:



According to the graph given above, all kinds of individuals in society are vulnerable or

³⁶ AIR 1993 SC 1960

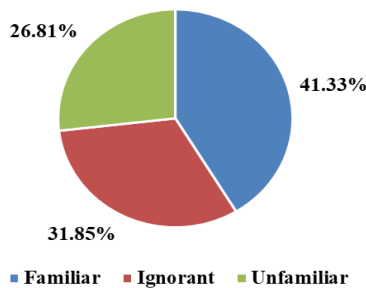
³⁷ AIR 1968 Raj 63, 1968 CriLJ 378

³⁸ AIR 1997SC 610

³⁹ AIR 1986 SC 1773

susceptible to custodial torture. Police violence is used as part of the standard process to get a confession from detainees and on occasion to influence the facts. It is paradoxical that in the nation's biggest republic, the police department, which is supposed to be a security agency, has become a purveyor of brutality and has committed brutal torture with the state as a perpetrator towards almost every class of people⁴⁰.

what extent are the law enforcement officers conversant of various constitutional and international provisions with respect to fundamental rights that prohibit torture?



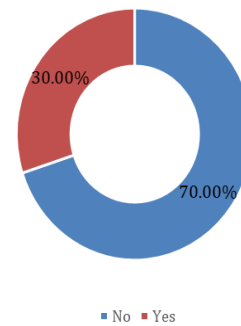
The pie chart represented above shows that about 41.33% of law enforcement officers are familiar with various constitutional and international provisions concerning fundamental rights that prohibit torture. Whereas about 26.81% are unfamiliar due to lack of training and education. 31.85% of law enforcement officers are ignorant of the various constitutional and international provisions concerning fundamental rights that prohibit torture. As, per the data collected from the respondents, it can be interpreted that, following the conversance of various constitutional and international provisions concerning fundamental rights that prohibit torture, every law enforcement offices are well aware. However, many policemen truly think that punishing fraudsters is perhaps the only method to deter them from committing further offenses⁴¹. They claim that prison systems no longer have deterrence on criminal activities because they are happy there. They believe in the effectiveness of third-degree forms of treatment when investigating crimes, especially someone who has committed felonies such as

⁴⁰ Bhattacharjee, A. Prisoner's Right to human Dignity under Criminal justice system in India: An Overview.

⁴¹ ReVieWeRS, BOARD Of. "The Indian Police Journal." (2018).

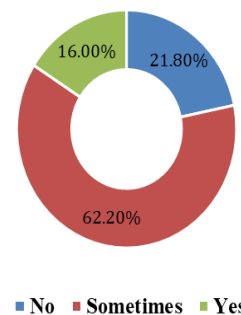
rapes and murders, as well as they think they deserve to be tortured.

Is the existing legal machinery self sufficient to deal with custodial torture in India?



From the responses to the questionnaire, it is observed that 70% of the respondents stated that the existing legal machinery is insufficient to deal with custodial torture in India. There is a reasoned notion that the perpetrators of custodial torture take the advantage of the law itself to protect themselves from being convicted of any offense relating to custodial torture. The burden of proof concerning evidence law needs to be revisited by the legislature to prevent abuse of power by the law enforcement authorities⁴².

Are the various guidelines issued by the Hon'ble Supreme Court with respect to arrest/ detention/torture implemented by police in true letter and spirit?



According to the graph above, the numerous instructions provided by the Supreme Court concerning incarceration enforced by police in full spirit and letter are quite occasional. The graph represents that about 62.20% of responses provided that there is occasional implementation of various guidelines issued by

⁴² Hagen, Leslie A. "Violent crime in Indian country and the federal response." Dep't of Just. J. Fed. L. & Prac. 69 (2021): 79.

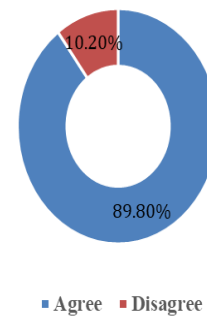
the Humble Supreme Court concerning arrest/detention/torture by the police in true letter and spirit. On the other hand, about 16% of responses implied that police follow and implement every guideline issued by the Supreme Court concerning arrest/detention/torture in true letter and spirit. Whereas 21.80%, responses demonstrate that police neglect the implementation of guidelines issued by the Hon'ble Supreme Court concerning arrest/detention/torture. From, the responses collected it is quite evident that Laws prohibiting in-custody torture are routinely violated, and several police officers regard violence as a legitimate tactic. The police as well as other law enforcers use administrative deprivation touting the use of violence as an explanation for exacting bribes and failing to perform their duties following the law⁴³. The administration's continued carelessness has also significantly lowered the self-esteem of police agencies. Instead of being regarded as a vital government program, police, as well as other law enforcers, are regarded as state-sponsored terror organizations primarily staffed by criminals. *Thus, trying to enact a law is never an essential milestone; enforcement of the law is a crucial component that is occasionally implemented in India.*

H1: There is appropriate governmental containment of the menace of custodial violence in legal terms.

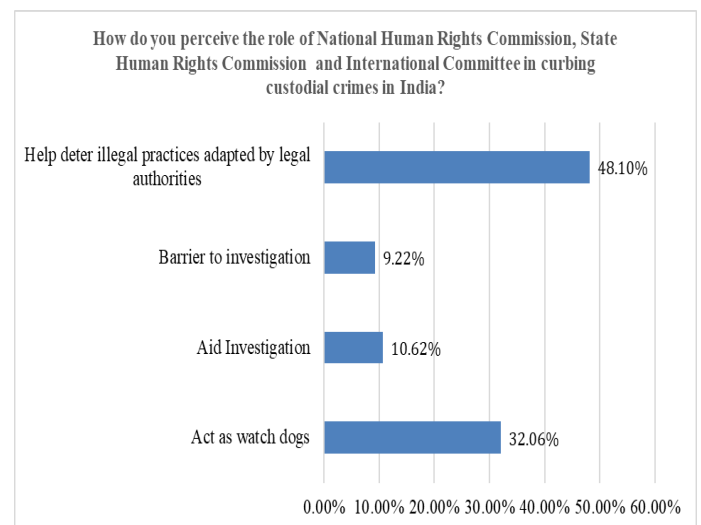
Criminal law is significantly more involved with reducing crime than with the criminal prosecution of the perpetrator. Underneath the code, precautionary authority is divided into two categories: Magisterial action (Chapters XIII and X of the CrPC), which is quasi-judicial as well as quasi-executive and police action (Chapter XI of the CrPC), that is primarily executive.

⁴³ Seri, Guillermina, and Jinee Lokaneeta. "Police as state: Governing citizenship through violence." *Police abuse in contemporary democracies*. Palgrave Macmillan, Cham, 2018. 55-80.

There is a national and international perception that custodial torture is used as one of the tools of investigation by the law enforcement agencies



As per the graph, 89.8% of respondents agreed that there is a national and international perception that custodial torture is used as one of the tools of the investigation by the law enforcement agencies. Torture in detention is often regarded as one of the most heinous types of human rights violation. It is prohibited under the Indian Constitution, the Judicial Branch, the National Human Rights Commission (NHRC), and the United Nations. However, police officers all across the nation reject these organizations. As a result, a realistic strategy to prevent crime is required to achieve a distinction between personal human rights and societal objectives⁴⁴. Also, to address the issue of increasing custody brutality in India, the National Human Rights Commission (NHRC) established a set of principles for the performance of magisterial proceedings for the investigation of custodial fatalities.



⁴⁴ Jawale, S. M., S. S. Bhise, and R. R. Wagh. "Custodial deaths: a retrospective study in Mumbai region." *IJHRMLP* (2020): 54.

As per the graph presented above, 48.10% of responses imply that the role of the National Human Rights Commission, State Human Rights Commission, and International Committee in curbing custodial crimes in India is initiated as these commissions help deter illegal practices adapted by legal authorities. 9.22% responses and 10.62% responses demonstrate that the commissions act as barriers to investigation and aid investigation respectively. Whereas, 32.06% attributed the role of National Human Rights Commission, State Human Rights Commission, and International Committee act to being watchdogs only.

This graph can be explained by stating that The National Human Rights Commission (NHRC) issued new instructions to state legislatures in terms of the ease of disclosing information about custodial fatalities⁴⁵. The body issued broad guidelines in 1993, stating that if any incident of custodial fatality is discovered on the grounds, the panel must be notified within 24 hours. It'd be supported by prioritized shreds such as videography findings, post-mortem reviews, and judicial inquest findings.

On the other hand, as per Maharashtra State Human Rights Commission, in the case of SCs/STs, the number of laws and safeguards is considerably greater. There have also been particular laws protecting them, such as the SC-ST (Prevention of Atrocities) Act, 1989, which clearly states that custodial assault against SC/ST is a criminal offense, yet the incidents have not been reduced to date⁴⁶.

Under International Committee in curbing custodial crimes in India, The First UN Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955, embraced the Standard Minimum Rules for such Treatment of Prisoners that also coped with regulations that provide humanistic torture of offenders by contemplating them as members of society. The UDHR serves as the backbone of the international body, with extensive regulations on Human Rights,

because it is a person's basic Human Rights that are impacted in a case of Custodial Violence.⁴⁷

Hypothesis Result

From the evaluation of the structured Hypothesis, it can be interpreted that the responses collected from the participants implies governmental containment of the menace of custodial violence has parallel variables. Few results showed that there is adequate governmental containment followed up by police officers, whereas other half of results show that due to lack of education and training or avoidance of the legal interventions by law enforcement officers, there is a lack of government containment towards the menaces. Although there is sufficient legislative measure provided in accordance to the custodial violence, but due to the inadequate implementation of the same or negligence towards the legal ordinance the violence is still continuing every year.

4. Results

According to the foregoing study, it is true that various judgments, orders, and directions have been enacted to increase transparency and establish the accountability of the law enforcement authorities. Custodial cruelty or mistreatment is a glaring abuse of legitimate power in an unethical manner since it is most usually witnessed against the downtrodden, impoverished, and unimportant. It can range from a single smack to many blows and the imposition of severe and non-grievous noticeable wounds, as well as acts of humiliation, compulsion, violation of personal privacy, and unlawful means of preventing urgent medical and legal assistance. The Indian government tolerates torture in police detention facilities, deeming it required for the judicial process while offering federal agents extrajudicial killings. It is widely assumed that the judicial branch will be in charge of the court lock-ups. But it is clear that indeed magistrates rely on police officers to carry out their judicial duties. The fact that police officers have immense judicial powers is the epitome of evil. Their job begins with the arrest

⁴⁵ Verma, Harish. "Assessment and Critique of the Role and Performance of the National Human Rights Commission in India." *Journal of Legal Studies & Research* 8.1 (2021): 90-102.

⁴⁶ Krishnadas Rajagopal,. Custodial death: SC raps Maharashtra police. *The Hindu*. (2018)

⁴⁷ Chatterjee, I. CUSTODIAL VIOLENCE AND THE LAW. (2021).

and continues until the arrestee is convicted. Disclosures revealed that the Court's autonomy was practically violated. This is interpreted as a violation of the Constitution's precepts and passes against the intention of the Criminal Procedure Code, 1973, which creates the judicial system as separate from the entire government.

Further, the results driven out from the hypothesis highlights that there are ample provisions provide by the Indian legal system for governmental containment of the menace of custodial violence, which are followed up adequately by, various law enforcement offices. But still, the lack of proper training and education, negligence of few police officers towards the legal regulations, are the factors leading to on-going custodial violence.

5. Conclusion

Even though the Judicial Branch and diverse High Courts in India, National Human Rights Commission and State Human Rights Commissions, various voluntary organizations, as well as the media, have all made significant contributions to ensure custodial justice, custodial violence is still in existence. The inadequacy of police officers in following the rules and regulations enlisted in the legislature regarding punitive measures for custodial violence, is the main factors that leads the way to the rising number of violence every year in India. Lip service or the effective implementation of strict regulations will not suffice to address the problem. As driven out from the hypothesis there is a strict necessity to execute measure within the Indian judiciary to prevent the cause of violence. Although various officers stand by the legislative measure to follow up the governmental containment of the menace of custodial violence in legal terms, but few law enforcement officers have been occasionally putting it into efforts, whereas other have just neglected it and think there is a need to implicit torture on detainees to get faster results.

Correspondingly, it is hard to find a solution without changing predefined notions as well as legal and social facts that have evolved over the centuries. It will definitely be an evolutionary process. As a result, concerted measures should be taken to influence

improvements in police's actions. Furthermore, robust campaigning from multiple angles and platforms is obligated to neutralize the threat of crimes against humanity of those in police custody. The current regime should determine the challenges and inadequacies as well as develop a master plan for addressing crimes against humanity in police detention.

5.1. Suggestions

It is now common practice for police officers to discriminate against suspects. The custodial treatment method should be homogeneous for all suspects, regardless of ones status . Another suggestion within this context is to provide ample opportunities for information sharing between the debriefed and the intelligence officer.

The well-being of the citizens can be guaranteed through hard work and prudent activity by law enforcement officers with a professional inclination. The problem of evil of in-custody violence could be omitted by increasing police competence and guaranteeing independence in their operations through transparency and accountability. Of course, every line of work has a direct duty to enforce discipline on its members and uphold a moral framework through internal systems and oversight by upper staff. However, in the police force, there is already an effective mechanism of superlative command structure over lieutenants. This authority of control will be used to make superior police officers more transparent in their dealings with lieutenants. Transparency promotes efficiency and public support. The group's renaissance should begin at the top, with clear indicators of desirable deeds sent down to all ranks and file.