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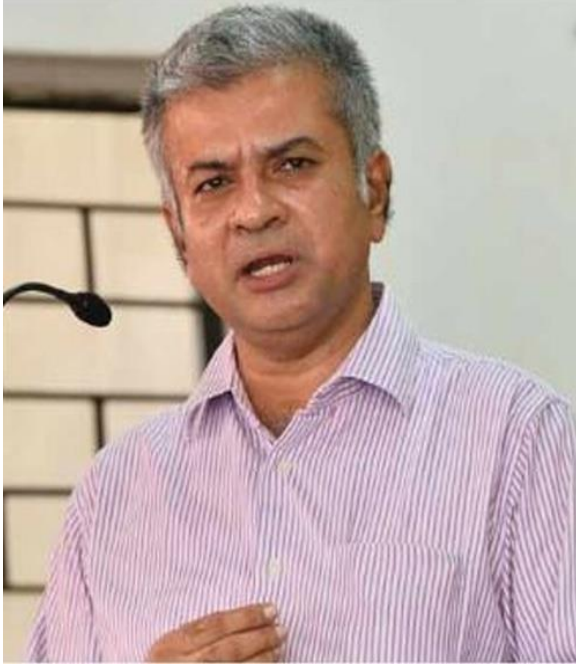
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L E G A L



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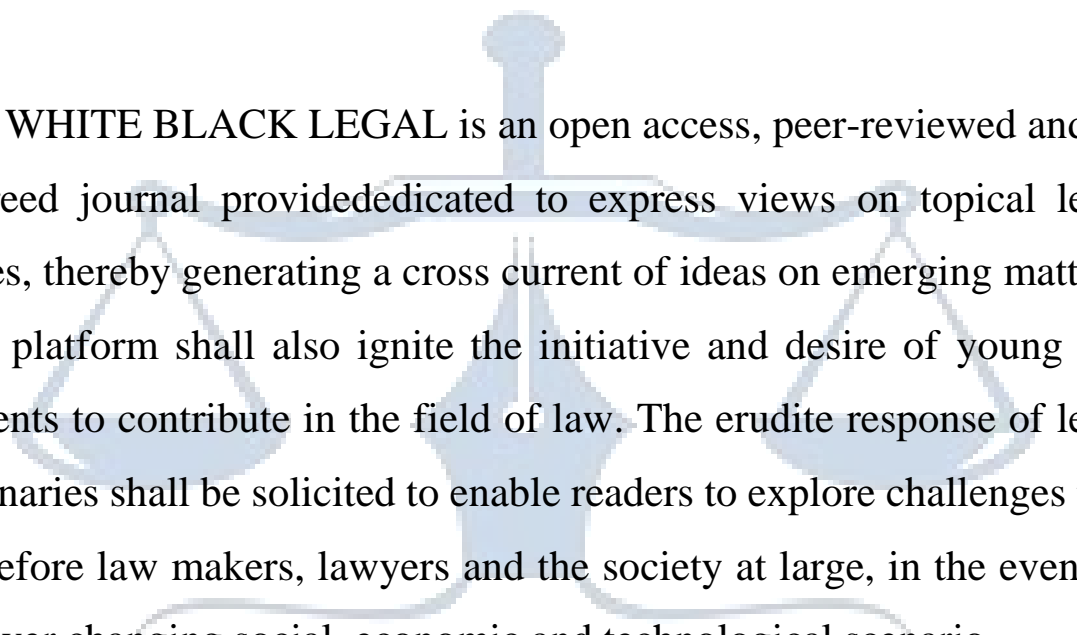
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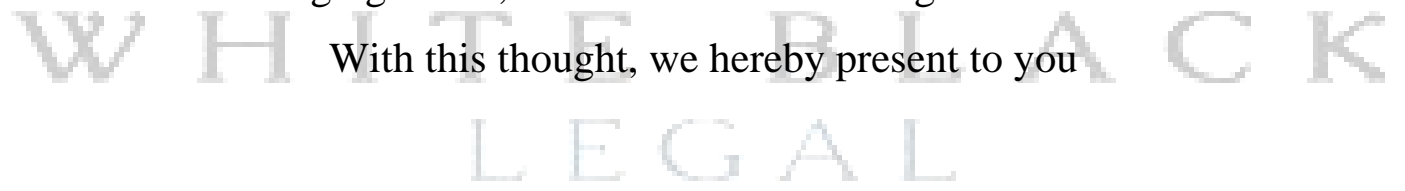
Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you





# **CUSTODIAL VIOLENCE**

AUTHORED BY - MOHIT KALRA

## **CHAPTER 1**

### **1.1 INTRODUCTION**

The use of excessive force, torture, or other types of abuse against people in the custody of law enforcement personnel or other custodial authority is referred to as "custodial violence." It violates human rights gravely and runs against to the values of justice, fairness, and the rule of law. Custodial abuse may happen anywhere, including in jails, prisons, detention facilities, and other locations where people are imprisoned.

The phrase "custodial violence" refers to a variety of violent deeds, including as physical assault, torture, sexual assault, psychological abuse, and neglect. The purpose of these actions is frequently to get information, impose control, or exercise authority over those who are being held in custody. Custodial abuse can result in injuries as well as serious physical and psychological effects on the victims trauma and, occasionally, even death.

Custodial violence is a phenomena that affects cultures all over the world and is not exclusive to any one nation or area. Both industrialised and developing nations have reported cases of custodial violence, underlining the urgent need for coordinated measures to address this serious human rights violation.

Various variables, including as power dynamics, institutional culture, individual behaviour, and larger society institutions, are the primary causes of incarceration violence. Custodial violence is frequently caused by power disparities between guardians and inmates, as well as a climate of impunity and lack of accountability. Inadequate training, poor supervision, overcrowding, and understaffing are just a few institutional issues that can foster an abusive atmosphere.

Custodial abuse has effects that go beyond those who are directly harmed. The people involved, their families, communities, and the whole legal system are all significantly impacted by them. Custodial abuse damages the legitimacy of the criminal justice

system, erodes public confidence in law enforcement, and feeds the vicious cycle of violence and impunity. It fosters an atmosphere of distrust and dread, making it harder for people to demand justice and exercise their rights.

An all-encompassing strategy that prioritises victim assistance, accountability, and prevention is necessary to address custodial abuse. Strong legislative frameworks, training programmes for law enforcement officials, independent supervision systems, and efficient investigation and conviction of offenders are required to achieve this. Additionally, victims' physical and psychological well-being depends on providing them with assistance and rehabilitation programmes and emotional healing, as well as to guarantee that their rights are protected.

Custodial violence can be addressed within a framework provided by international human rights agreements like the Convention Against Torture and the Universal Declaration of Human Rights. In order to prevent and treat violence in detention, national legal systems are essential for developing laws and enforcement procedures.

## **1.2 REVIEW OF LITERATURE**

### **BOOKS**

- 1. "Torture and Democracy" by Darius Rejali :** This book provides a comprehensive analysis of the history, methods, and consequences of torture, including custodial violence. It examines how democratic societies have engaged in or tolerated torture and discusses the social and political implications.
- 2. "Custodial Violence and Torture"** In this, author has discussed about the various laws related to the Custodial Violence in India.
- 3. "Out of Sight, Out of Mind: A Study of Police Custodial Violence in India" by Amnesty International India .**In this, the author has discussed about the various rights and duties of the Indian constitution.
- 4. "Custodial Violence and Torture" edited by Shalu Nigam and Sanjeev Kumar.** This collection of essays delves into the different dimensions of custodial violence and torture. It discusses the legal aspects, human rights perspectives, and the need for effective safeguards to prevent such violence..



5. **The Torture Papers: The Road to Abu Ghraib"** edited by **Karen J. Greenberg and Joshua L. Dratel** . This book compiles documents, memos, and reports that shed light on the use of torture and custodial violence in the context of the U.S. "war on terror." It explores the policies and decisions that contributed to the abuse at Abu Ghraib prison and beyond.
6. **Custodial Violence and Abuse: An International Perspective"** edited by **Irene Corradetti and Nicola Carr**). This book provides a global perspective on custodial violence, examining case studies from various countries. It addresses issues such as torture, deaths in custody, and the role of international law in preventing and addressing such violence..

## ARTICLES

1. **Custodial Violence: Understanding and Addressing a Grave Human Rights Violation"** by **Amnesty International**. This article provides an overview of custodial violence, its forms, and its impact on individuals. It also highlights the role of human rights organizations in addressing this issue
2. **Custodial Violence: A Global Problem"** by **Nitya Ramakrishnan**. This article explores custodial violence as a global problem, examining examples from different countries and discussing the legal framework for addressing such violence.
3. **Custodial Violence: A Brutal Form of Abuse"** by **Vikash Sharma**. This article discusses the different forms of custodial violence, including physical and psychological abuse, and highlights the need for stronger accountability mechanisms.
4. **The Anatomy of Custodial Violence in India"** by **Suhas Chakma** . This article examines the prevalence of custodial violence in India, analyzes the causes and consequences, and suggests measures to prevent and combat such abuse.
5. **Deaths in Custody: The Hidden Toll of Police Violence"** by **Ed Pilkington**. This article focuses on the issue of deaths in custody and the systemic factors that contribute to such incidents. It discusses cases from different countries and emphasizes the need for transparency and accountability.
6. **"The Invisible Torturers: The Crisis of Custodial Violence in Sri Lanka"** by **Adayaalam Centre for Policy Research** .This report sheds light on custodial

violence in Sri Lanka, documenting cases of torture and abuse and analyzing the legal and institutional challenges in addressing this issue.

7. **The Anatomy of Custodial Violence in India" by Suhas Chakma** . This article examines the prevalence of custodial violence in India, analyzes the causes and consequences, and suggests measures to prevent and combat such abuse.
8. **Custodial Violence: Understanding and Addressing a Grave Human Rights Violation" by Amnesty International**. This article provides an overview of custodial violence, its forms, and its impact on individuals. It also highlights the role of human rights organizations in addressing this issue
9. **Ratnalal & Dhirajlal: The India Penal Code**.In this, the author has defined all the laws explained under the Indian Penal Code of the country, India.
10. **Deaths in Custody: The Hidden Toll of Police Violence" by Ed Pilkington**. This article focuses on the issue of deaths in custody and the systemic factors that contribute to such incidents. It discusses cases from different countries and emphasizes the need for transparency and accountability.

### **1.3 STATEMENT OF PROBLEM**

The number of custodial violence cases has been increasing day by day. The laws of the country are not very threatening on this behalf. The officials are becoming negligent and misusing of there powers which is a serious threat to the general Pubic

### **1.4 RESEARCH QUESTIONS**

1. Weather the law of the country is providing the required relief to the victims of Custodial Violence?
2. What type of relief is being provided?
3. Under how many laws, acts are the relief on this purpose being provided?
4. What punishment is being given to the officers committing Custodial Violence?

### **1.5 OBJECTIVE OF THE RESEARCH**

The objective of this research is to find out what is lacking in the constitutional provisions because of which the problem of Custodial Violence has become common

and also that India needs more laws regarding the issue.

## **1.6 HYPOTHESIS**

The following hypothesis has been formulated for the study:

1. The existing laws are inadequate in addressing the causes that leads to Custodial Violence.
2. Provisions for calculating compensation in cases of Custodial Violence are not proper.

## **1.7 RESEARCH METHODOLOGY**

This research is totally doctrinal work .Doctrinal approach primary aim at collection and collation of relevant principles covering legal, ethical and clinical prospective. A detailed survey and analysis of pertinent judicial decision will be made. Follow up analysis will be made in the light of relevant statistical tool and matter. Thereafter, structured recommendation will be attempted so as to bring desirable changes in appropriate legal and ethical framework.

## **1.8 CHAPTERIZATION**

In chapter one the basic introduction on the topic Custodial Violence is being discussed that what is custodial violence and etc.

The second chapter is the CONCEPT ASPECT OF CUSTODIAL VIOLENCE etc is being discussed.

The Third chapter which is Causes of Custodial Violence the various reasons of why and how is custodial violence occurs etc. is being discussed.

In Chapter fourth which is Consequences of Custodial Violence which tells about the different consequences faced by the people who are victim of custodial violence has been discussed.

In fifth chapter is about Legal Frameworks and International Obligations for custodial violence is being discussed

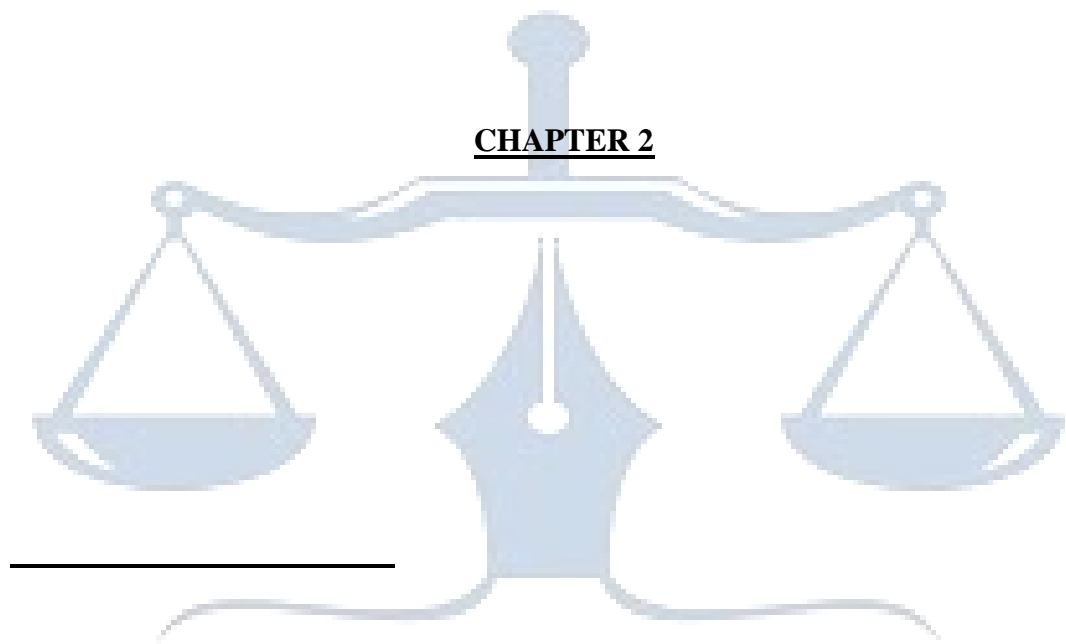
The sixth chapter is about judicial interpretation in this chapter, various judicial

interpretations regarding the custodial violence have been discussed.

The seventh chapter is about Preventive Measures and Remedial Strategies to avoid , prevent from custodial violence have been discussed

The last chapter contains the conclusion, suggestion and bibliography

## CHAPTER 2



W H I T E   B L A C K  
L E G A L



## Understanding Custodial Violence

### 2.1 Defining Custodial Violence

Custodial violence is the use of excessive force, abuse, or violence against people when they are in the care of law enforcement officials, jails, or other institutions in charge of their custody. When someone is taken from their freedom and is then mistreated, tortured, or otherwise ill-treated, it is a violation of their human rights.

Worldwide, there are many distinct types of custody violence that can occur in different settings. It may take occur during an individual's arrest, questioning, transit, or incarceration in a police cell, a jail, a detention facility, or any location when they are in the care of custodial authorities. Police officers, prison guards, or other employees in charge of the care and protection of detainees or inmates may commit this violence

Custodial violence has a physical component that entails using more force than is reasonable or required to uphold law and order or safeguard the safety of oneself or others. This can involve physical violence of any kind, such as punching, kicking, slapping, or beating. Such behaviours not only hurt people physically, but they also exacerbate emotional suffering and psychological damage.

Acts that are intended to humiliate, frighten, degrade, or mentally influence someone are what are known as psychological violence in correctional situations. It might involve coercion or psychological pressure to compel information or confessions, as well as verbal abuse, threats, insults, racial or ethnic slurs, and verbal or physical violence. The psychological health and dignity of people can be negatively impacted by psychological abuse.

Another type of violence performed against people in prison is sexual violence, which includes any non-consensual sexual act or harassment. It covers any type of sexual abuse, including molestation, rape, and sexual assault. Such behaviours endanger people's bodily and sexual integrity while also increasing their helplessness and susceptibility.

Several international and regional human rights agreements forbid custody violence as

a severe breach of human rights. The International Covenant on Civil and Political<sup>1</sup> Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the United Nations Universal Declaration of Human Rights all expressly forbid physical abuse in detention and uphold people's rights to be free from torture and other inhumane treatment.

Custodial violence has far-reaching and serious repercussions. It runs counter to the custodial authorities' obligation to preserve and safeguard human rights, undermining the values of justice, fairness, and the rule of law. Custodial abuse undermines public confidence in the legal system and the police, maintains a climate of impunity, and encourages a cycle of violence in society.

Custodial violence also has an influence on the families, communities, and society as a whole in addition to the individuals who are directly affected by it. It may result in a decline in trust in institutions, an uptick in social conflict, and a collapse of societal cohesiveness. Custodial violence can create long-lasting physical and psychological injury that might result in trauma.

Custodial violence must be addressed with a thorough and multifaceted strategy. Promoting a culture of respect for human rights, making sure that law enforcement and custodial staff are properly trained and held accountable, and putting in place efficient supervision procedures to find and stop abuses should be the main goals of preventive measures.

To end impunity and provide victims of custodial violence justice, accountability is essential. It necessitates the creation of unbiased, impartial, and independent processes to look into charges of violence, prosecute offenders, and guarantee victims' access to restitution and compensation. Holding people accountable sends a clear message that custodial abuse won't be accepted and may help prevent further abuse.

When it comes to identifying and publicising incidents of violence committed while in

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<sup>1</sup> Available at <http://www.indialawyers.wordpress.com> (Accessed on 2<sup>nd</sup> of January, 2018).

<sup>1</sup> Available at <http://www.airwebworld.com> (Accessed on 2<sup>nd</sup> of January, 2018).

<sup>1</sup> V.R. Krishna Iyer, *Justice, The dialectics and Dynamism of Human Rights in India Yesterday, Today and Tomorrow*, Human Right Year Book, (Universal Law Publication Pvt. Ltd., New Delhi 2001).

<sup>1</sup> Available at <http://www.airwebworld.com> (Accessed on 2<sup>nd</sup> of January, 2018).

<sup>1</sup> Available at <http://www.airwebworld.com> (Accessed on 2<sup>nd</sup> of January, 2018).

a person's care, pushing for reforms, and offering assistance to victims, civil society organisations, human rights advocates, and the media all play a critical role. Their initiatives play a critical role in advancing human rights education, increasing awareness, and calling for justice and responsibility.<sup>2</sup>

### Number of Deaths in Police Custody and Lockup 2013-2015<sup>3</sup>

	Deaths in Police Custody/Lockups	YEARS		
		2013	2014	2015
1.	Of person remanded to police custody by Court.	21	32	30
2.	Of person not remanded to police custody by Court.	97	61	67

### Details on the Custodial Deaths in Police Custody During 2013-15<sup>4</sup>

S.No	Death during/due to	Years		
		2013	2014	2015
1.	During production, process in Courts, journey connected with investigation.	15	–	–
2.	During hospitalization, treatment.	20	10	12
3.	Due to Accidents	6	0	1
4.	In mob attacks/riots	6	4	1
5.	By other criminals	2	1	3
6.	By Suicides	34	27	34

<sup>2</sup> United Nations. (1977). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>3</sup> National Crime Record Bureau, *Crime in India*, Reports from the year 2013-15.

<sup>4</sup> National Crime Record Bureau, *Crime in India*, Reports from the year 2013-15.

7.	During escape from Custody	4	7	5
8.	Illness/Natural Deaths	43	16	11

## 2.2. Forms and Manifestations of Custodial Violence

There are several types of Custodial Violence-

1. Custodial Torture-
  - (a) Mental
  - (b) Physical
2. Sexual Harassment in Custody
3. Custodial Rape
4. Custodial Death
5. Custodial Torture of Children

Violence committed while in a person's custody can take many different forms and occur in a variety of settings. It includes a variety of violent and abusive acts perpetrated against people who are in custody, such as prisoners, suspects, detainees, or other people who are under the jurisdiction of custodial authorities. Some of the ways that custodial violence manifests and takes the following forms:

**Physical Violence:** One of the most obvious manifestations of custodial violence is physical violence. It entails the use of more force than is necessary or appropriate by those in charge of keeping the peace or ensuring the safety of others. This can involve physical violence of any kind, such as punching, kicking, slapping, or beating. Such acts of aggression can have a variety of negative effects, from short-term discomfort and agony to permanent impairments or even death<sup>5</sup>

<sup>5</sup> Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 2nd of January, 2018).  
 Available at <http://www.etheses.saurashtrauniversity.edu> (Accessed on 4th of January, 2018).  
 Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 4th of January, 2018).  
 Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 4th of January, 2018).



Torture: Torture is a severe and organised type of involuntary bodily or psychological harm intended to cause great pain or suffering. It is employed to coerce confessions, elicit information, or just to punish or scare people. Serious beatings, electric shocks, asphyxiation, sexual assault, sensory deprivation, and psychological torture are all examples of forms of torture. The victims of torture suffer severe physical, psychological, and long-lasting traumatic impacts.

Custodial violence has many forms, but one of the most heinous is sexual violence. It includes any form of sexual assault or harassment that is carried out on people who are in detention. This can apply to any type of sexual abuse, such as rape, molestation, or sexual assault. Individuals' bodily and sexual integrity are violated by sexual assault, which also worsens their vulnerability and powerlessness.

Psychological Violence: Attempts to denigrate, humiliate, frighten, or mentally influence someone are considered acts of psychological violence in correctional settings. It might involve coercion or psychological pressure to compel information or confessions, as well as verbal abuse, threats, insults, racial or ethnic slurs, and verbal or physical violence. Psychological abuse may leave victims traumatised and emotionally damaged, as well as having long-lasting repercussions on their mental health and sense of self-worth.

Medical Neglect and Denial of Basic necessities: Other forms of custody violence include medical neglect and denial of basic necessities. The right to medical attention and treatment for health issues exists for those who are detained. Custodial authorities, however, can fail to give proper medical care or purposely delay vital treatment, resulting in a decline in health even demise. Depriving people in custody of basic necessities like food, drink, clothes, or shelter also constitutes aggression against their rights and dignity.

Forced disappearances and extrajudicial killings: In certain instances, incarceration violence includes these kind of actions as well. Detainees may be wrongfully held, covertly moved to secret places, tortured, or even murdered without following the proper legal procedures. In addition to violating human rights, these activities also go against to the values of fairness, due process, and the rule of law.

Custodial violence can disproportionately affect specific groups in society, such as

marginalised communities, minorities, immigrants, or people with disabilities. This is due to systemic discrimination and targeting of vulnerable groups. Systemic bias and discrimination may be a factor.

### **Methods Of Torture**

Most common methods of torture applied are:

- Prolonged solitary confinement
- Solitary confinement coupled with coercive and harsh treatment,
- Physical assault with or without marks of violence,
- Over-crowding of an outrageous nature in rooms reaching to the extent of intermingling persons under custody with mentally ill persons or with sexual offenders or with opposite sex or with sadistic senior students.
- Outraging the modesty of women under custody,
- Torture of children in front of parents and vice-versa.

“During interrogation, the suspects were subjected to merciless beating, with lathis, and whips. Many were kicked and punched. A few were stripped and electric shocks were applied to their body including private parts. Hair was pulled out. The suspects describe the cross-examination room of police station as virtual hell filled with screams and shouts and abuses of the tormentors. Thus, torture became an independent tool for creating terror in the mind of the suspects.”<sup>6</sup>

#### **2.2.1 Historical Perspective and Global Scope**

Custodial violence is not a recent occurrence; it has occurred for a very long time, in many different forms, and in many different parts of the world. We may better comprehend the pervasiveness of this problem and the requirement for ongoing attempts to address it by looking at it from a historical perspective and in the context of the entire world.

Historical Perspective: Systems of confinement and punishment were developed in

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<sup>6</sup> Chambers v. Florida, 309 US 227 (1940)

antiquity, which is when custodial violence first appeared. Custodial violence was often employed in ancient civilizations such as ancient Egypt, Greece, and Rome as a way to uphold social control, enforce authority, and punish criminals. During these times, it was common to engage in brutal penalties, public executions, and torture.

Custodial abuse persisted during the mediaeval era with the use of harsh punishments including whipping, branding, and public humiliation. Torture was frequently used to get confessions and punish alleged offenders.

Human rights have made enormous strides in the contemporary period, and people are now recognised for their intrinsic worth. The ban of cruel and inhumane treatment was established during the Enlightenment, which was characterised by the emergence of notions of liberty and justice. Movements calling for the reform of prisons and the acknowledgment of prisoners' rights began to take shape in the 18th and 19th centuries.

Custodial abuse occurred despite these historical developments, notably in times of political turmoil, authoritarian governments, and military conflicts. Custodial violence occurred often in the 20th century, including during World War II, when both state and non-state entities committed widespread abuse, torture, and extrajudicial murders.

Custodial violence impacts a variety of communities and judicial systems worldwide and is not restricted to any one area or nation. All of the continents have reported cases of custodial violence, demonstrating how pervasive this issue is.

Custodial violence is strongly ingrained in some nations due to systemic problems including corruption, a lack of accountability, poor rule of law, and insufficient training and supervision of custodial authority. These elements contribute to the climate that<sup>77</sup> allows for the impunity of incarceration violence. These nations frequently struggle to adequately handle custodial violence.

In several other nations, intermittently or in certain situations, such as protests or times of political turmoil, there may be custodial violence. Custodial violence can happen in these situations, with instances being the abuse of detainees in conflict zones or the

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<sup>77</sup> Ibid.

<sup>7</sup> Ibid.

<sup>7</sup> Ibid.

inappropriate use of force by law police during protests.

Vulnerable people are also disproportionately impacted by incarceration violence. Minority groups, marginalised communities, immigrants, refugees, and those with disabilities frequently face more challenges than other groups.

International human rights groups and organisations are aware of the extent of custodial brutality across the world. The United Nations has continuously denounced and demanded the abolition of custodial violence through its different agencies and processes. Custodial violence has been addressed in the jurisprudence and campaigning of regional human rights organisations as the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights, and European Court of Human Rights.

Adoption of international and regional human rights laws, such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which offers a thorough framework to prevent and combat custodial violence, is one strategy being used to address custodial violence globally. Additionally, media, civil society organisations, and human rights organisations all play critical roles in recording wrongdoings, spreading awareness, promoting changes, and helping victims.

### **2.3 Human Rights Frameworks and Custodial Violence:-**

Frameworks based on human rights are essential for combating violence against people in detention and guaranteeing their safety. These frameworks lay the groundwork for holding offenders accountable by establishing the fundamental rights and values that custodial authority must uphold. The following are some significant human rights theories that apply to violence against prisoners:

Human Rights Universal Declaration (UDHR): The Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly in 1948, is a key document that outlines the fundamental liberties and rights that every person is entitled to. It places an emphasis on the right to life, liberty, and security of the person and contains provisions that forbid torture and other cruel, inhuman, or humiliating treatment or punishment.



The 1966-adopted International Covenant on Civil and Political Rights (ICCPR) expands on the UDHR's list of guaranteed rights. It contains clauses that pertain to the right to life (Article 6), the prohibition of torture (Article 7), and the freedom from cruel, inhuman, or degrading treatment or punishment (Article 9). According to the ICCPR, governments have a responsibility to guarantee that these rights are upheld for every person under their control.

The CAT prohibits the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment. The CAT, which was adopted by the UN in 1984, focuses primarily on the outlawing and averting of torture. According to its definition, torture is the deliberate inflicting of great pain or suffering, whether by the perpetrator or with their consent.

Instruments for regional human rights: Systems for regional human rights have also created custodial violence-related frameworks. For instance, protections against torture, harsh treatment, and arbitrary imprisonment are included in the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights. These treaties set up regional oversight and response systems for custodial abuse and other human rights breaches.

The Nelson Mandela Rules, also known as the United Nations Standard Minimum Rules for the Treatment of Prisoners, offer recommendations on how to treat those who are detained humanely. They create guidelines and requirements for different elements of custody care, such as the use of torture, availability of medical treatment, safety from assault, and the significance of rehabilitation.<sup>8</sup>

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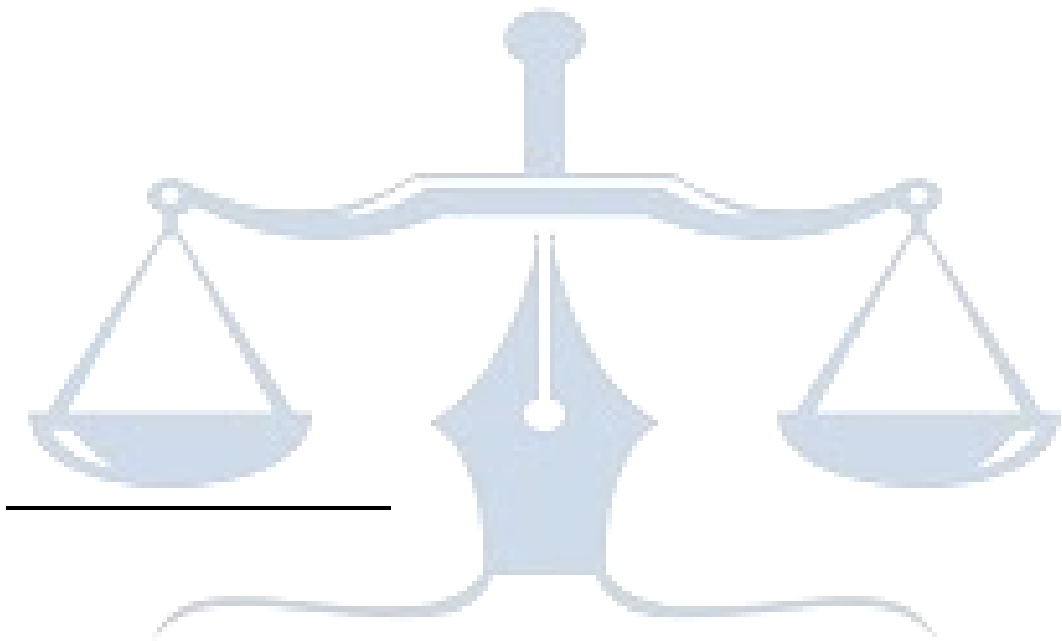
<sup>8 8</sup> Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 5<sup>th</sup> of January,2018).

<sup>8</sup> Ibid.

<sup>8</sup> Ibid.

<sup>8</sup> Ibid.

**CHAPTER 3**



W H I T E   B L A C K  
L E G A L

## Causes of Custodial Violence

### **3.1 Structural Factors: Power Dynamics and Institutional Culture**

Custodial violence is significantly influenced by structural variables, such as power relations and institutional culture. In custodial settings, these elements foster a climate where abuse can happen and flourish. Effectively addressing these systemic issues is essential for preventing custodial violence. Here are some important factors to think about:

**Power Dynamics:** Power disparities in incarceration environments are a factor in incarceration violence. Custodial authorities, such as police officers or prison guards, have a great deal of power and influence over those who are in their care. Due to the imbalance of power, there may be potential for abuse of power, maltreatment, and dehumanisation of prisoners or detainees. Recognising and addressing these power relations while making sure accountability systems are in place to stop the misuse of power are necessary to address custodial violence.

**Institutional Culture:** Custodial institutions' cultures and ideals strongly influence how people behave and see those who are in their care. Custodial violence is more likely to occur if the institutional culture accepts or condones violence, prejudice, or impunity. Promoting a human rights-based strategy that places a strong emphasis on the rights and dignity of people in detention is one way to change the institutional culture. This may be done by educating people, running awareness campaigns, and creating clear policies and processes that encourage responsibility, respect, and nonviolence.

**Lack of Oversight and responsibility:** Custodial violence continues in part because there are insufficient procedures for oversight and responsibility. Human rights violations are more likely to go unreported or unpunished when custodial authorities lack adequate oversight or outside observation. Transparency, accountability, and adherence to human rights norms are improved by putting in place efficient supervision measures, such as independent monitoring organisations or inspection systems.<sup>9</sup>

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<sup>9</sup> National Crime Record Bureau, *Crime in India*, Reports from the year 2013-15.

<sup>9</sup> National Crime Record Bureau, *Crime in India*, Reports from the year 2013-15.

**Inadequate Training and Resources:** Custodial staff members who lack enough training and resources may act violently. Training courses ought to cover human rights, de-escalation methods, and the proper use of force in addition to operational abilities. To provide safe and humane custodial settings, enough resources are required, including staffing numbers, infrastructure, and equipment.

**Lack of Redress and Complaint Mechanisms:** Custodial violence is perpetuated since there aren't easily accessible and efficient complaint tools and remedy procedures. There must be channels for those in detention to denounce abuse, look for justice, and obtain the right solutions. putting in place independent complaint channels, offering legal help, and assuring in order to address custodial abuse, access to justice is crucial.

**Discrimination and Marginalisation:** Certain people in prison may be more susceptible to custodial violence if they experience discrimination or marginalisation based on traits like race, ethnicity, gender, or socioeconomic standing. Individuals' treatment and perception in the correctional system may be impacted by structural prejudices and inequality. Addressing systematic prejudice and promoting inclusive policies that guarantee fairness and protection for each and every person in detention are essential.<sup>10</sup>

### **3.2. Societal Factors: Prejudice, Discrimination, and Stereotypes**

Custodial violence is significantly influenced by societal issues, which are discussed in more detail in section 3.1. People in detention are mistreated and abused due to prejudice, discrimination, and stereotypes that are pervasive in society. This chapter examines the cultural underpinnings of custodial violence, emphasising how prejudices and preconceived beliefs may affect law enforcement personnel' actions and increase the vulnerability of particular populations.

**Prejudice:** Prejudice refers to preconceived opinions or attitudes towards persons or

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<sup>10</sup> Human Rights Watch. (2001). World Report 2001: Custodial Violence and Torture.

groups that are based on factors such as perceived socioeconomic position, racial or ethnic background, religion, gender, or sexual orientation. These biases may affect how law enforcement professionals deal with suspects in detention and their ability to make decisions. The idea of guilt based on stereotypes can be brought on by prejudice and result in unequal treatment and a higher risk of violence against some people.

For example, racial prejudice has played a substantial role in incidents of custodial violence, particularly when racial and ethnic minorities are involved. According to studies, persons from marginalised groups—such as Black, Indigenous, and people of colour (BIPOC)—are disproportionately the targets of police harassment and assault. Racially motivated preconceptions can result in biased law enforcement tactics, racial profiling, and the overuse of force against certain groups.

Similar to this, religious prejudice can target someone based on their religious practises or beliefs, which can result in unfair treatment while they are in detention. This bias may be motivated by misunderstandings, preconceptions, or Islamophobia, for instance, which can lead to unfair treatment of Muslim inmates, including torture and other cruel practises.

3.3 Discrimination: Discrimination is when someone is treated unfairly or unfavourably because of their real or perceived traits. Different treatment, the denial of rights, and unequal access to justice are just a few ways it could appear. The susceptibility of marginalised populations to incarceration violence can be increased by discrimination.

Custodial violence may continue as a result of systemic inequality within the criminal justice system. For instance, biased police tactics like racial profiling or focusing on particular communities make it more common for some groups to be unfairly targeted. Individuals from marginalised communities may be treated differently or have their rights violated during an arrest, a detention, or other contacts with law enforcement personnel due to discrimination.

Another important factor to take into account is discrimination based on gender. Females and In correctional settings, gender minorities may experience certain types of violence including sexual assault or harassment. Social prejudices that reinforce the idea that their concerns are not as valid or deserving of attention may make their experiences even worse. The likelihood of custodial violence might increase for some

people because to the intersectionality of prejudice, when different identities including race, gender, and socioeconomic position interact.<sup>11</sup>

**Stereotypes:** Based on perceived qualities, stereotypes are oversimplified generalisations or preconceptions about certain people or groups. Stereotypes can shape how law enforcement officers engage with suspects in detention by affecting perceptions, attitudes, and behaviour. Powerful individuals who internalise stereotypes may make biased judgements and engage in discriminatory behaviour.

Criminal and dangerousness stereotypes are particularly prevalent pertinent in the context of physical abuse in the home. People from these areas may be treated with more mistrust and prejudice if specific racial or ethnic groupings are linked to crime. In addition to creating a cycle of discrimination and violence, stereotypes may encourage an over-policing of marginalised areas or the adoption of more harsh measures against specific populations.

Stereotypes about gender may be harmful as well. For instance, gender preconceptions regarding men and women may affect how law enforcement personnel act. Men may experience physical abuse because it is believed that they are more likely to be a threat, but women may experience sexual harassment or abuse because it is believed that they are more vulnerable.

**Impact and Implications:** Stereotypes, prejudice, and discrimination in society have significant effects on violence in detention facilities. They lead to the loss of confidence between communities and law enforcement authorities as well as increasing the possibility of violence and abuse. The values of equality, fairness, and justice within the criminal justice system are undermined by the persistence of prejudices and stereotypes.

Additionally, the cycle of injustice and marginalisation is sustained through custodial brutality motivated by prejudice and discrimination. It exacerbates social injustices and

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<sup>1111</sup> Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 6th of January, 2018).

Ibid.

Ibid.

Ibid.



limits the capacity of members of marginalised groups to obtain justice and demand redress for wrongs they have suffered. Trauma, social estrangement, and a decreased sense of safety and security among impacted communities are some of the long-term effects.

### **3.3. Individual Factors: Psychological and Behavioral Explanations**

Examining individual aspects, such as psychological and behavioural causes, is necessary to comprehend prison violence. Individual aspects give information on the motives, attitudes, and behaviours of individuals engaged, while structural elements help to shape the larger framework in which custodial violence occurs. These elements make it easier for us to understand why certain correctional officials abuse their power. Key psychological and behavioural causes for custodial violence include the following:

**Authoritarian Personality:** According to the authoritarian personality hypothesis, people who exhibit particular personality qualities are more likely to use physical or verbal force while in a position of authority. These characteristics include a rigorous commitment to authority, a conviction in rigid social hierarchies, a propensity for aggressiveness, and a lack of empathy for people viewed as belonging to "out-group" members. An authoritarian personality type may make people more likely to abuse their power and mistreat individuals in custody.

A strong demand for order, control, and deference to authority are traits of the authoritarian personality. People with this personality type could see incarceration as a chance to assert their control and impose their power. They could have prejudices towards particular groups and believe those in custody are less than or undeserving of respect. Custodial violence may result from these views in combination with a tendency towards hostility.

Deindividuation is a psychological condition in which people have a diminished feeling of personal identity and responsibility as a result of belonging to a broader system or group. The anonymity and consistency of authoritative figures in a prison context may lead to deindividuation, making it simpler for people to act abusively when they may<sup>12</sup>

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<sup>12</sup> Available at <http://www.wcl.american.edu> (Accessed on 6th of January, 2018).  
Available at <http://www.legalservicesindia.com> (Accessed on 6th of January, 2018).

not otherwise. Deindividuation can make internal restraints weaker and compliance to harmful group norms more prevalent, which might result in violence in the custody setting.

People may feel less limited by social norms and ethical considerations when they believe that their activities are less likely to be individually identified or that they are protected by the broader institution. Diffusion of responsibility, when people feel less accountable for their actions, might emerge from this. Deindividuation can increase the possibility of abusive behaviour in circumstances where people are being held in custody as well as a disregard for their rights and general welfare.

Custodial authorities' actions and views may be impacted by implicit biases, which are unintentional connections and prejudices that people possess. These prejudices may result in unequal treatment and lack of sympathy for members of marginalised or stigmatised groups. Certain people may be perceived as threats or as deserving of punishment more frequently by custodial authorities, which can lead to an increase in aggressive and abusive behaviour.

Cognitive Biases and Stereotyping: Cognitive biases and stereotypes may affect how those in charge of holding people view and speak with them. Pre-existing prejudices and stereotypes based on traits like colour, ethnicity, or socioeconomic class can result in unfair treatment and a reduction in the value of persons who are detained as human beings. These Biases can skew judgements, affect how decisions are made, and encourage violent behaviour.

Institutionalisation and Desensitisation: Long-term contact with incarcerated populations can institutionalise and desensitise incarcerated personnel. The process through which people embrace the attitudes, behaviours, and social norms of the custodial facility is referred to as institutionalisation. Desensitisation happens when those repeatedly exposed to violence and severe surroundings develop emotional detachment and become less sensitive to the suffering of those in captivity. Institutionalisation and desensitisation can lead to a loss of empathy and a normalisation of incarceration violence.

In custodial environments, there is frequently a culture that supports the use of force

and control as required to preserve security and order. Custodial officials may eventually adapt to this mindset and acquire the idea that violence and hostility are fundamental to their job. This normalisation of violence has the potential to make people less sensitive to how their actions affect those who are in jail, which can reduce empathy and increase tolerance for abusive behaviour.

**Psychological Stress and Burnout:** Custodial authorities may experience psychological stress and burnout due to the rigorous nature of their employment, which includes exposure to violence, high levels of stress, and difficult relationships. People who undergo persistent stress and due to emotional weariness, they may be less able to cope with and control their emotions, which raises the possibility that they may act abusively. Personal traumas and unsolved psychological problems might also affect how custodial authorities behave.

Working in a correctional environment may be extremely demanding and exhausting on the soul. Custodial authorities frequently encounter traumatic events, hostile environments, and demanding jobs. Over time, stress buildup can lead to a decline in mental health, which can affect judgement and self-control. Custodial officials may therefore be more likely to respond rashly and use abusive methods when interacting with detainees as a result.

When others are around, people are less likely to intervene in a situation, a phenomenon known as the "bystander effect." The presence of additional custodial authority who observe abusive behaviour in correctional settings may lead to a division of responsibility and a lower chance of intervention. Custodial abuse may continue as a result of witnesses failing to act or report the abuse, which is known as the bystander effect.<sup>13</sup>

It's crucial to remember that these psychological and behavioural justifications do not explain or condone violent behaviour in the home. Instead, they aid in shedding light on the intricate the interaction of several individual characteristics that support abusive

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<sup>13</sup> Available at <http://www.redress.org> (Accessed on 6th of January, 2018).  
Kishor Singh Ravinder Dev and others v. State of Rajasthan (1980).  
D.K. Basu & Ashok K. Jauhari v. State of West Bengal, AIR 1997 SC 610.  
Joginder Singh, *Discovery of Independent India*, 37 (Fusion Books, 2003).

behaviours in detention facilities. It is imperative to address these concerns through all-encompassing programmes that emphasise custodial authorities' training, prevention, and assistance. By addressing individual psychological and behavioural variables, strategies including psychological examinations, stress management programmes, and advocating for a culture of empathy and accountability can help reduce the likelihood of prison violence.

Interventions should also address the larger structural and systemic problems that contribute to and sustain custodial violence in addition to focusing on individual variables. The rights, well-being, and dignity of people in custody shall be prioritised in correctional contexts by combining efforts to address individual and structural problems.

When others are around, people are less likely to intervene in a situation, a phenomenon known as the "bystander effect." The presence of additional custodial authorities who observe abusive behaviour in correctional settings may lead to a division of responsibility and a lower chance of intervention. Custodial abuse may continue as a result of witnesses failing to act or report the abuse, which is known as the bystander effect.

A sense of shared accountability for the behaviour of one's coworkers can be fostered by the presence of other custodial authorities. Due to concerns about social consequences or reprisal, people may be reluctant to confront or report abusive behaviour as a result of this diffusion of blame. Violence is allowed to go unchecked when no one steps in or reports abusive behaviour, which contributes to a culture of freedom in places of custody.

It's crucial to remember that these psychological and behavioural justifications do not explain or condone violent behaviour in the home. Instead, they aid in shedding light on the intricate interaction of individual elements that lead to abusive behaviours in incarceration situations. It is imperative to address these concerns through all-encompassing programmes that emphasise custodial authorities' training, prevention, and assistance. By addressing individual psychological and behavioural variables, strategies including psychological examinations, stress management programmes, and advocating for a culture of empathy and accountability can help reduce the likelihood

of prison violence.<sup>14</sup>

### **3.4 Intersectionality and Multiple Forms of Discrimination**

The idea of intersectionality emphasises how many social classifications—such as racial, gendered, sexual, class, and others—intersect and work together to produce particular oppressive systems and experiences. It acknowledges that people may experience a variety of types of prejudice and discrimination that are impacted by the confluence of numerous identities and social systems rather than being purely dependent on one identity. Understanding intersectionality in the context of custodial violence is essential for appreciating the complexity and range of experiences of persons who suffer violence in these settings.

Identity and intersectionality: Intersectionality acknowledges that people have numerous identities, and that these identities may overlap and interact to affect how people see the world. For instance, different people may perceive prejudice in various ways based on their socioeconomic status, gender, and ethnicity. Each element of their identities influences how they live and might interact or amplify other types of prejudice. Custodial violence may be impacted by a number of intersecting identities, and depending on these intersections, people may experience violence in different ways.

Discrimination in various Forms: Intersectionality emphasises the occurrence of discrimination in various forms as well as how these forms interact and intersect. It recognises that prejudice may be exacerbated by a number of social circumstances and that it is not always perceived in isolation. People may experience prejudice in custodial settings on the basis of their race, gender, sexual orientation, religion, disability, or other identities. These overlapping discriminatory practises have the potential to make people more susceptible to violence while in custody and heighten the suffering they endure.

For instance, a person who identifies as LGBTQ+ and belongs to a marginalised racial or ethnic group may experience increased discrimination in detention facilities. They

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<sup>14</sup> Amnesty International. (1999). Policing and Human Rights: Eliminating Custodial Torture. Retrieved from

could encounter abuse or violence that is impacted by the confluence of their identities rather than being exclusively focused on their race or sexual orientation. In order to successfully prevent prison violence and protect the rights and wellbeing of people in custody, it is crucial to recognise and address the many types of prejudice.

**Amplification of Vulnerabilities:** Intersectionality emphasises how many types of discrimination may make people more vulnerable and make them more likely to be violent. In prison settings, people with overlapping identities may experience heightened marginalisation, social exclusion, and power disparities. For instance, women of colour may be more likely to experience incarceration racism, sexism, and other variables that influence their lives collide to cause violence.

Furthermore, obtaining justice and seeking reparation for wrongdoing may present special difficulties for those with overlapping identities. They could come with obstacles that prohibit them from reporting assault, getting assistance, or getting recourse via the judicial system. Systemic biases, prejudices, and a lack of knowledge or awareness of how various forms of discrimination within the criminal justice system connect can all be examples of these hurdles. Combating custodial violence requires addressing the unique vulnerabilities and difficulties that people with overlapping identities confront.

Intersectionality brings to foreground the ways in which certain identities and experiences can be made invisible or marginalised within more general debates of incarceration abuse. It's possible to disregard or undervalue the experiences of people with overlapping identities dominant narratives, which highlight a certain element of identity or experience, cast a shadow over them. This absence of recognition can lead to greater marginalisation and a dearth of pertinent answers to their particular needs and issues.<sup>15</sup>

For instance, custodial abuse may have a disproportionately negative effect on the lives of transgender people, especially transgender women of colour. However, when

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<sup>15</sup> Rajinder Sachar, *Change Evidence Law*, 13 *Civil and Military Law Journal* 40 (1995)  
Dr. S.K. Kapoor, *International Law and Human Rights*, 16th Edition, Central Law Agency, 2007, Allahabad.  
*Legal glossary*, Ministry of Law and Justice, Govt. of India, (6th edn., Civil lines, New Delhi 2001, P-344)  
Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).  
Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).



discussing custodial abuse, their stories are frequently ignored or inadequately covered. To create comprehensive policies that address the various realities of incarceration violence, it is essential to acknowledge and prioritise the experiences of marginalised people with multiple intersecting identities.

**Empowering Marginalised Voices:** Intersectionality places a strong emphasis on the value of empowering marginalised voices and incorporating them into advocacy campaigns, policy creation, and decision-making processes. It is critical to raise people's voices who encounter violence in custody caused by the collision of different identities. Policies and interventions that address the intricacies of custodial abuse can be more responsive, inclusive, and successful by prioritising their experiences and viewpoints.

Involving diverse voices in policy discussions, working with grassroots organisations and community-based initiatives, and providing spaces for marginalised people to tell their stories can all contribute to making sure that responses to custodial violence are intersectional and take into account the particular experiences of those who are most affected.

Custodial violence must be addressed with comprehensive measures in order to acknowledge intersectionality. This entails addressing both the institutional and personal elements that lead to violence in detention facilities. Comprehensive strategies entail structural changes that combat institutional prejudices, advance diversity and inclusion, and guarantee custodial authorities are held accountable. It also entails giving people who encounter incarceration violence access to support resources, legal assistance, and mental health care that are sensitive to their overlapping identities and needs.

Intersectionality, unconscious biases, and cultural competency training should all be included in programmes for correctional authority. Custodial authorities can adopt more sympathetic and inclusive work practises through raising awareness of and comprehension of overlapping forms of prejudice.

### **3.5. Interplay of Factors and Contributing Forces**

Custodial violence is greatly influenced by the interaction of several variables and

contributing elements. These elements interact with one another and can reinforce one another, forming a complicated web of variables that helps violence persist in incarceration environments. To address and prevent custodial violence, comprehensive measures must take into account how these components interact. Here, we look at some of the main forces and causes at play:

**Power dynamics:** One of the main causes of custodial violence is power relations in contexts where people are being held in custody. There is a natural power imbalance when people are being held in custody since custodial authorities frequently have a lot of influence and power over them. Because of structural issues like the hierarchical structure of organisations that house people in custody, a lack of oversight and the impunity that certain correctional officials have.

Power is easily misused when it is unregulated and unaccountable. Custodial authorities may abuse their position of authority by acting in an oppressive or domineering manner. The power relationships that exist in incarceration environments can promote a culture of violence and aid in the normalisation of abusive behaviours.

**Institutional Culture:** The institutional culture in a custodial environment has a significant impact on how custodial authority behave and act. The common ideals, standards, and conventions that shape how people behave in institutions are referred to as institutional culture. The use of force as a method of maintaining control and discipline may occasionally be tolerated or even encouraged by the culture within correctional facilities.

a corporate culture that prioritises Custodial violence can be influenced by aggressiveness, dehumanisation, and punishment. This environment could encourage a "us versus them" mindset, in which those in jail are seen as adversaries rather than as human beings deserving of respect and decency. Since institutional culture may affect custodial authorities' attitudes, behaviours, and decision-making processes, changing it is essential for avoiding and treating custodial violence.<sup>16</sup>

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<sup>16</sup> P. Ramanatha Aiyer: The Encyclopaedic Law Dictionary with Legal Maxim (1992):Wadhwa & Company, Nagpur, India  
Ibid.

Lack of responsibility: One major factor in custodial violence is a lack of responsibility. When custodial authorities are not held responsible for their conduct, a climate of impunity is fostered, which fosters abusive behaviours. Limited supervision systems, weak complaint processes, and a lack of repercussions for engaging in unethical behaviour by custodial authorities can all contribute to the lack of accountability in violence

Custodial violence must be prevented and addressed, and accountability systems including independent monitoring organisations, open complaint processes, and strict disciplinary penalties are essential. These controls offer a means for people to report abuse and seek redress while acting as a check on the authority of custodial authorities.

Custodial violence may be influenced by structural elements, such as social, economic, and political circumstances. In prison settings, marginalisation, inequality, and prejudice in society might appear, making some groups more susceptible to violence. For instance, those with disabilities, low-income origins, or members of marginalised racial or ethnic groups may be more likely to experience custodial violence as a result of ingrained prejudice and discrimination.

Additionally, in correctional institutions, overcrowding, a lack of personnel, and resource restrictions can lead to a stressful atmosphere where violent behaviour is more likely in a dynamic atmosphere. Broader societal reforms are necessary to address these structural issues, such as fighting systematic prejudice, guaranteeing social and economic justice, and giving investments in custodial reform first priority.

Lack of Education and Training: Custodial officials who get insufficient education and training may be responsible for some of the violence they witness. Training programmes that emphasise human rights, conflict resolution, communication abilities, and de-escalation methods are essential for giving custody authority the information

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Chamber Dictionary: (1983) Allied Publisher P.330.

Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).

Legal Glossary (1988) Ministry of Law and Justice, Govt. of India.

Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).

S.K. Ghosh: Politics of Violence (1992), Ashish Publishing, Delhi.

Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).

Dr. S. Subramaniam: Human Rights International Challenges (2004), Manas Publications, Delhi (India).

Available at <http://www.legalservicesindia.com> (Accessed on 7th of January, 2018).

Ibid.

and abilities they need to deal with difficult circumstances. Without the proper training, custodial staff may automatically resort to forceful and aggressive measures in order to resolve disagreements or disruptions in custodial environments.

Education on stereotypes, unconscious bias, and intersectionality can also assist custodial authorities in seeing their own prejudices and comprehending the varied perspectives of persons detained. To make sure that correctional authorities are continually learning and upgrading their abilities to conform with best practises, ongoing professional development and training programmes are required.

**Societal Attitudes and Stigma:** Stigma and societal attitudes towards those in detention may be a factor in the violence that occurs there. The criminal justice system's participants may be subjected to negative stereotypes, dehumanisation, and stigmatisation that might foster an environment where violence against them is more likely to be tolerated or disregarded. This might feed the cycle of violence and further marginalise already marginalised people.<sup>17</sup>

It takes all-encompassing efforts to address cultural attitudes and stigma, including public awareness campaigns, community involvement, and programmes that encourage empathy, understanding, and rehabilitation rather than punishment. Promoting an open and empathetic culture and dispelling misconceptions can help in preventing custodial

violence<sup>18</sup>

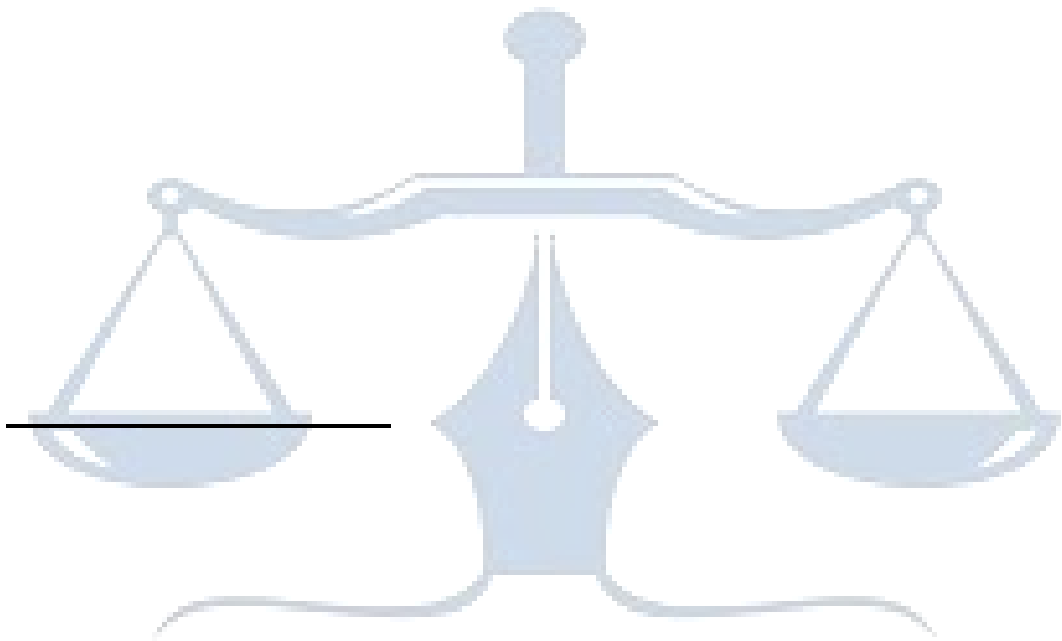
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<sup>17</sup> Available at <http://www.naghrw.tripod.com> (Accessed on 8th of January, 2018).  
AIR 1997 1 SCC 416.

Available at <http://www.legalservicesindia.com> (Accessed on 8th of January, 2018).  
Ibid.

<sup>18</sup> Davis, A. Y. (2003).

CHAPTER 4



W H I T E   B L A C K  
L E G A L

## Consequences of Custodial Violence

### 4.1 CONCEPT

The results of custodial Violence are sweeping and can significantly affect people, networks, and the more extensive law enforcement framework. These outcomes envelop physical, mental, social, and fundamental aspects, featuring the earnest need to address and forestall custodial viciousness. Here are a portion of the key outcomes:

**Actual Outcomes:** Custodial viciousness frequently brings about actual damage and wounds to people in care. The utilization of unreasonable power, actual maltreatment, and torment can prompt a scope of wounds, including broken bones, inward organ harm, injuries, gashes, and even passing. The actual outcomes can fluctuate in seriousness, for certain people encountering long haul or extremely durable handicaps because of the savagery.

The actual damage incurred through custodial savagery not just disregards the basic freedoms and pride of people yet additionally subverts their actual prosperity. The quick and long haul actual results can have huge ramifications for the wellbeing and generally speaking personal satisfaction of the people who experience custodial brutality.

**Mental Injury:** Custodial brutality can have extreme mental ramifications for people in guardianship. The horrible encounters of viciousness, misuse, and embarrassment can bring about post-awful pressure issue (PTSD), tension problems, melancholy, and other emotional wellness conditions. The mental injury can continue long after the occurrences of savagery, affecting a singular's capacity to trust others, structure connections, and reintegrate into society after their delivery.

Besides, custodial savagery can significantly affect the emotional wellness and prosperity of relatives and networks. Seeing or catching wind of the brutality experienced by friends and family in care can prompt auxiliary injury and profound pain. The mental results of custodial savagery need thorough help and psychological well-being administrations to help people recuperate and reconstruct their lives.<sup>19</sup>

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<sup>19</sup> Collins Cobuild: English Language Dictionary (1992, P-1546)  
Custodial torture worse than terrorism, available at  
<http://www.thehindu.com/2003/07/27/stories/2003072703510500.htm>, accessed on 15th of January, 2018.



Disintegration of Trust: Custodial brutality dissolves trust in the law enforcement framework and subverts the authenticity of custodial establishments. At the point when people experience brutality and maltreatment while in authority, their confidence in policing, officials, and the more extensive equity framework is seriously compromised. This disintegration of trust reaches out past the singular instances of brutality and can affect the discernments and associations of the more extensive local area with policing.

Absence of confidence in the law enforcement framework can block participation, impede the revealing of wrongdoings, and propagate a pattern of dread and doubt. It subverts the basic standards of equity and decency and sabotages the endeavors to keep social control and security.

Exemption and Absence of Equity: One of the huge outcomes of custodial viciousness is the overall culture of exemption, where custodial specialists answerable for the brutality frequently slip by everyone's notice. The absence of responsibility and ramifications for the people who take part in custodial savagery sustains a feeling of treachery and builds up the pattern of brutality. It communicates something specific that custodial specialists are exempt from the rules that everyone else follows and can act without any potential repercussions.

The absence of equity for casualties of custodial savagery denies them review as well as propagates a culture of quietness and dread. It further dissuades people from detailing misuses and looking for equity, prompting a propagation of brutality and an absence of confidence in the equity framework.

Subverting Recovery and Reintegration: Custodial brutality sabotages the objectives of restoration and reintegration inside the law enforcement framework. The motivation behind custodial foundations isn't just to rebuff yet additionally to give open doors to people to change, reintegrate into society, and carry on with honest existences. In any case, when people experience brutality and maltreatment in care, it can prevent their restoration cycle and improve the probability of recidivism.<sup>20</sup>

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<sup>20</sup> Available at <http://www.crl-law.blogspot.com> (Accessed on 15th of January, 2018).  
Munshi Singh Gautam (Dead v. State of M.P., AIR 2005 SC 402 : (2004) 7 SLT 38 : (2004) 3 JCC 1816.  
Available at <http://www.cordelia.hu> (Accessed on 16th of January, 2018)

Encountering custodial brutality can prompt a profound feeling of disdain, outrage, and doubt towards the framework, making it moving for people to take part in rehabilitative projects or embrace open doors for self-awareness. The absence of security and regard inside custodial settings can sustain a pattern of savagery and obstruct endeavors to help people in their excursion towards reintegration.

**Social and Financial Outcomes:** Custodial viciousness can have huge social and monetary ramifications for people, families, and networks. People who have encountered custodial viciousness might confront hardships in tracking down business, lodging, and revamping their lives post-discharge. The physical and mental outcomes of brutality can restrict their capacity to take part completely in the public eye and add to their minimization and social prohibition.

Besides, the results of custodial brutality stretch out past the singular level and can affect families and networks. The monetary weight of clinical costs, legitimate charges, and the requirement for progressing backing can additionally strain families previously confronting financial difficulties. The more extensive local area may likewise experience the ill effects of the disintegration of trust and the propagation of a pattern of viciousness, influencing social union and generally prosperity.<sup>21</sup>

#### **4.2 Implications for Human Rights and Dignity**

Custodial abuse has a tremendous impact on people's rights and sense of worth. It diminishes the intrinsic dignity and value of every person and transgresses key norms contained in international human rights law. We thoroughly examine the effects of custodial abuse on human rights and dignity in this section.

**Right to Life and Security of Person:** Both of these rights are directly threatened by incarceration violence. Everyone has the right to be free from torture and other cruel, inhumane, or humiliating practises. Custodial violence, such as the disproportionate use of force, physical abuse, and torture, violates this right and jeopardises the lives and wellbeing of those who are subjected to it. The basic human right to life and security of person should be safeguarded when in a custodial environment.<sup>22</sup>

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<sup>21</sup> International Rehabilitation Council for Torture Victims (IRCT). (2013)

<sup>22</sup> Ibid.

Available at <http://www.dyuthi.cusat.ac.in> (Accessed on 17th of January, 2018).

Interdiction of Torture and Ill-Treatment: International human rights legislation firmly forbids both torture and ill-treatment, both of which are frequently included in acts of custodial violence. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of the United Nations expressly forbids torture and mandates that governments implement effective measures to deter and prosecute acts of torture that occur inside their borders.

In addition to causing excruciating physical and mental suffering, torture and other cruel treatment can also have a long-lasting impact on a person and leave permanent scars. The ban on torture and other cruel treatment is a non-derogable right, which means that it is never allowed to be stopped, not even in emergency or armed conflict situations.

Right to Freedom from Discrimination: Often disproportionately, incarceration violence has an impact on vulnerable and marginalised people who already experience systematic prejudice and injustice. A breach of the right to be free from discrimination occurs when someone is treated unfairly due to their colour, ethnicity, gender, handicap, or any other reason. Custodial abuse targets particular categories of people with violence, which contributes to the continuation and aggravation of various types of discrimination.

Custodial violence must be addressed using an intersectional strategy that acknowledges the various types of prejudice and identities that people may experience. The institutional underpinnings and power relations that support the disparate treatment and violence suffered by marginalised groups must be addressed.

Right to Justice and Remedy: Victims' rights to justice and redress are jeopardised by acts of custodial violence. Every person has the right to access justice, request compensation for wrongs, and get a fair trial with no bias. However, the culture of impunity and lack of responsibility that is prevalent in situations of violence committed while in custody frequently denies victims' rights to justice and feeds the cycle of

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Available at <http://www.wcl.american.edu> (Accessed on 17th of January, 2018).

Available at, <http://www.peopleswatch.org/dm-documents/NPPT/Hand%20book/English.pdf> (Accessed on 19th of January, 2018)

Available at <http://www.etheses.saurashtrauniversity.edu> (Accessed on 19th of January, 2018).

violence.

Access to independent and impartial complaint processes, investigations, prosecutions, and restitution should all be available to victims of custodial abuse. States have a responsibility to make sure that people who have been harmed while being held in a facility may obtain justice and get enough money to make up for their losses.

Custodial abuse constitutes a serious breach of one's right to dignity. All human rights are based on the core idea of human dignity. It asks that people be treated with respect, justice, and humanity and acknowledges the intrinsic worth and value of every individual. disciplinary violence By subjecting others to humiliating treatment, abuse, and demeaning behaviour, one violates their dignity and erodes their sense of self-worth.

In order to respect and protect human dignity in custodial settings, it is important to develop a culture of respect, promote a secure and supportive environment, and make sure that custodial officials have received the training necessary to uphold the rights and dignity of those under their care.

The realisation of the right to rehabilitation and reintegration is hampered by incarceration violence. Custodial facilities ought to provide inmates the chance to change, get well, and reintegrate into society in addition to serving out punishment. However, being subjected to violence and abuse while in detention can make it difficult for people to participate in rehabilitation programmes and hamper their capacity to successfully reintegrate.

the right to treatment and reintegration provides possibilities for employment and social integration, as well as access to educational, vocational, and psychological support. Violence committed while in custody jeopardises fundamental rights and may feed a vicious cycle of violence and recidivism.<sup>23</sup>

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<sup>23</sup> Chambers v. Florida, 309 US 227 (1940)

Available at,  
<http://www.rshrc.nic.in/project/19.%20custodial%20violence%20in%20police%20custody.pdf>  
(accessed on 20th of January, 2018).

Joan Fitzpatrick, "International Norms and Violence Against Women", in Women's Human Rights, ed. Rebecca J. Cook (1994), 544.

States have a fundamental obligation to uphold, defend, and uphold human rights in contexts where people are being held in custody. This entails taking proactive steps to stop custodial abuse, opening up swift and impartial investigations into claims of violence, bringing offenders to justice, and offering victims' compensation.

In their encounters with people in custody, custodial authorities, such as police officers, corrections officers, and other staff, have a responsibility to safeguard human rights and dignity. To guarantee their understanding of and adherence to human rights principles, they should get the proper training, education, and assistance.<sup>24</sup>

### **4.3. Social and Community Effects**

Custodial violence has significant social and community repercussions that go beyond the direct victims and have an influence on society as a whole. These impacts take many different forms and have a big impact on community trust, social cohesiveness, and general well-being. We thoroughly examine the social and societal impacts of incarceration violence in this section.

Custodial violence undermines public confidence in law enforcement, correctional facilities, and the criminal justice system as a whole. When those held in custody suffer violence, abuse, or mistreatment, it calls into question the institutions' perceived authority and integrity. The connection between communities and law enforcement may break down as a consequence of trust erosion, which would make collaboration and successful crime prevention initiatives more difficult.

Communities where there is a lot of mistrust of the criminal justice system may be less inclined to file reports of crimes, assist with inquiries, or make proactive attempts to keep the neighbourhood safe. Ineffective police enforcement can result from a lack of trust, which can set off a vicious cycle wherein communities continue to feel uneasy and frustrated.

Marginalised and disadvantaged populations are frequently disproportionately affected by custody violence, which exacerbates already-existing socioeconomic divides and inequities. Custodial violence may be more common among some populations,

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<sup>24</sup> National Crime Records Bureau (NCRB). (2021). Crime in India - 2020.

including racial and ethnic minorities, those from lower socioeconomic statuses, and people with impairments.

Custodial institutions promote and maintain the systematic marginalisation and discrimination that these populations experience outside of custodial settings. Unfairness and isolation are felt. It perpetuates the structural inequities already present in society and feeds a cycle of social division.

Custodial violence has repercussions that go beyond the immediate victims and have an effect on their families and communities. The violence that loved ones in custody face can cause secondary trauma, mental pain, and a sense of powerlessness in family members who see or hear about it. Relationships within families may be strained, their emotional health may be affected, and their general functioning may be disrupted by the trauma and stress.

Additionally, because those who have been subjected to violence and abuse while in prison may find it difficult to reintegrate into society, custodial violence has an impact on the larger community. The effects of violence on their body and mind may make it more difficult for them to engage acquire job or participate actively in a supportive social network. Custodial violence can result in the loss of productive community members, which can have long-term economic and social repercussions.

Violence committed while in custody compromises community safety and security. Violence and abuse towards people in prison can increase resentment, rage, and a sense of unfairness in local communities. Social unrest, demonstrations, and a rise in hostilities between the local populace and law enforcement officials might result from this.<sup>25</sup>

A cycle of violence and reprisals can also result from custodial abuse. People who have been subjected to violence while in detention may grow to distrust the government and look for alternate ways to voice their complaints. As a result, attempts to reduce violence may be hampered uphold the safety and security of the neighbourhood.

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<sup>25</sup> Available at <http://www.medicalawethicsnls.blogspot.co.uk> (Accessed on 18th of January, 2018). Available at, <http://www.panthic.org/articles/5394> (accessed on 25th of January, 2018) AIR 1979 SC 185. "Restorative Justice in India", Springer Nature, 2017

Custodial abuse can lead to the stigmatisation of those who work in the criminal justice system, according to public perception. The environment in which violence against people who have been in custody is more likely to be condoned or disregarded might be influenced by negative preconceptions, dehumanisation, and stigmatisation of those people. It becomes more difficult for people to reintegrate into society and conduct law-abiding lifestyles as a result of stigmatisation.

The way the public views violence committed while in custody and how the authorities react are also very important. Violence incidents that go unrecognised, uninvestigated, or unaddressed can promote unfavourable attitudes and undermine public trust in the criminal justice system. On the other hand, successful approaches that value responsibility, openness, and adherence to human rights can be beneficial reestablish public faith and trust.

Custodial abuse has the capacity to enflame activists and mobilise entire communities. Violence may be a spark for community organising, lobbying, and calls for institutional change when it is made public. Community members, representatives from human rights organisations, and defenders of social justice may band together to condemn interrogation abuse, call for responsibility, and promote changes to the criminal justice system.<sup>26</sup>

Such a mobilisation may increase understanding, amplify the voices of victims, and encourage legislative modifications to stop abuse against people in custody. It may advance a more just and equitable society and support the larger push for criminal justice reform.

#### **4.4 Erosion of Public Trust and Legitimacy**

Numerous institutional, social, and political elements can have profound effects on

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<sup>26</sup> Available at <http://www.naghrw.tripod.com> (Accessed on 20th of January, 2018).

Solgabai Sunil Pawar v. State of Maharashtra, 1998 Cri LJ 1505 (1507, 1508): (1998) 2 Mah LJ 410: (1998)

Unstarred Question No. 1475, Answered by Minister of State in the Ministry of Home Affairs, Mr. Jitendra Singh in the Lok Sabha on 09.08.2011.

Available at, <http://www.newstrackindia.com/newsdetails/235> (accessed on 27th of January, 2018).



society, including the degradation of public legitimacy and confidence. When confidence in public institutions wanes, it can harm social cohesiveness, obstruct efficient government, and foster scepticism and cynicism. We shall delve deeply into the deterioration of public legitimacy in this part.

**Lack of openness and Accountability:** The lack of openness and accountability in public institutions is one of the major causes undermining public trust and legitimacy. People lose faith in the system and feel unfairness when they believe those in positions of power are not held responsible for their actions. This is particularly common in when there are insufficient investigations, disciplinary measures, or legal repercussions for those who commit acts of custodial violence.

Mechanisms for accountability and transparency are essential for establishing and sustaining public confidence. Lack of openness in how government institutions are run can make the general people suspicious and cynical. On the other hand, effective accountability systems that guarantee objective investigations, disciplinary proceedings, and suitable consequences for wrongdoing aid in regaining and sustaining public confidence.

The impression of corruption and the misuse of power inside public institutions has the potential to seriously damage public confidence and legitimacy. When people think that public officials are dishonest or that they abuse their position for personal benefit instead of It erodes trust in the system while serving the public interest.

Public trust can be seriously damaged by incarceration brutality, especially if there are also claims of corruption or authority misuse. The notion that individuals in positions of power are not acting in the public's best interest might arise through the use of excessive force, torture, or other types of abuse by law enforcement or correctional personnel. This may encourage a culture of scepticism and distrust for government agencies.<sup>27</sup>

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<sup>27</sup> Available at <http://www.achrweb.org> (Accessed on 27th of January, 2018).

Complaint of Asian Centre for Human Rights to National Human Rights Commission, 27th August, 2010.

Complaint of Asian Centre for Human Rights to National Commission for Protection of Child Rights, 12th June, 2010.

Ineffective Communication and Public involvement: Keeping the public's trust and legitimacy requires effective communication and substantive public involvement. Misunderstandings, inaccurate information, and a decline in public confidence can result from governmental institutions' inability to properly explain their activities, policies, and judgements. Lack of timely and accurate information in situations of custodial abuse can feed rumours and conjecture, further undermining public confidence. In order to resolve problems, give accurate information, and get feedback from the public, public institutions should place a high priority on openness. This encourages a feeling of community ownership, inclusion, and trust.

implementation of the Law: The validity and public faith of the law can be damaged by its inconsistent or unjust implementation. Confidence in the legal system is undermined when people believe that the law is enforced selectively, favouring some people or groups while disadvantaging others.

If people think that offenders are not held responsible for their actions in the case of custodial violence or that particular groups are disproportionately affected by it, it calls into question the system's supposed fairness and impartiality because of their status or connections. Losing faith in law enforcement organisations, prisons, and the larger justice system may result from this.

Public perspective and Media Coverage: The media is a key factor in forming the public's perspective and determining its level of confidence in public institutions. Custodial violence episodes can either increase or decrease public trust depending on how they are reported in the media. Sensationalised or biased reporting can exacerbate divides, reinforce unfavourable stereotypes, and increase public scepticism.

On the other side, accurate reporting that holds government agencies accountable may promote more openness, public understanding, and eventually, public confidence. Media outlets have a duty to inform the public with truthful and objective information, bringing attention to instances of incarceration violence and encouraging productive discussion.<sup>28</sup>

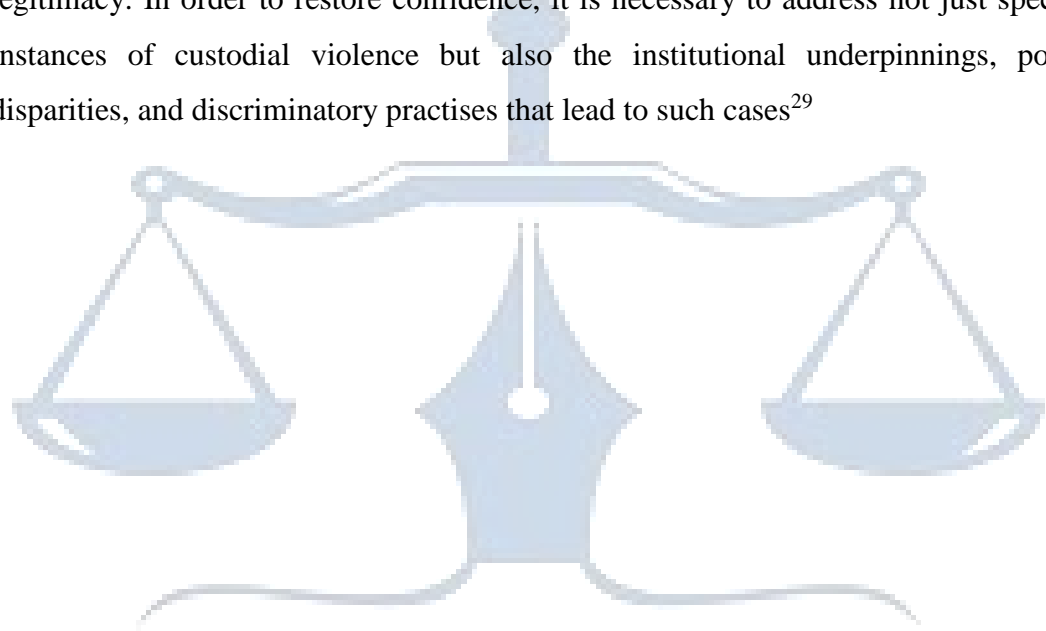
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Complaint of Asian Centre for Human Rights to National Commission for Protection of Child Rights, 13th September, 2010.

<sup>28</sup> Amnesty International: Amnesty International publishes reports and conducts research on human rights abuses, including custodial violence

Historical context and systemic problems: Historical context and systemic problems have an impact on public trust and legitimacy. Public trust may be permanently impacted by historical patterns of abuse, prejudice, and impunity within public institutions. Communities with a history of incarceration abuse or other types of state-authorized violence may harbour a deep-seated mistrust and scepticism towards public institutions.

Recognising historical injustices, addressing structural problems, and enacting substantial reforms are necessary to combat the erosion of public confidence and legitimacy. In order to restore confidence, it is necessary to address not just specific instances of custodial violence but also the institutional underpinnings, power disparities, and discriminatory practises that lead to such cases<sup>29</sup>



# WHITE BLACK CHAPTER 5 LEGAL

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<sup>29</sup> AIR 1997 SC 610.



W H I T E   B L A C K  
L E G A L

## Legal Frameworks and International Obligations

### 5.1 INTRODUCTION

When it comes to tackling custodial abuse and ensuring that offenders are held accountable, legal frameworks and international duties are essential. They provide guidelines for the care of people who are in custody, define and outlaw custodial violence, and spell down the responsibilities of governments in terms of stopping, looking into, and resolving violent crimes. We shall examine the legal frameworks and international commitments pertaining to custodial violence in this part.

International human rights law: International human rights law outlines the fundamental freedoms and rights that everyone, even those who are detained, is entitled to. The International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Universal Declaration of Human Rights (UDHR) are some of the legal documents that protect human rights important international treaties that forbid violence in custody and impose legal responsibilities on nations.

The Universal Declaration of Human Rights (UDHR), which was approved by the UN General Assembly in 1948, affirms the inherent worth and equal rights of every person. No one shall be subjected to torture or other cruel, inhuman, or degrading treatment or punishment, according to this law.

The UDHR outlines several rights that are further developed in the ICCPR, which has been ratified by a sizable number of governments. It also outlines particular requirements pertaining to the treatment of people who are in detention. While Article 10 ensures the rights of those deprived of their liberty, including the right to be treated with compassion and respect for their dignity, Article 7 forbids torture and other cruel, inhuman, or degrading treatment or punishment.

The CAT was approved by The UN General Assembly develops a comprehensive framework to prevent and combat torture in 1984, notably addressing the prohibition of torture. It defines torture and requires nations to take concrete steps to stop it from happening inside their borders.<sup>30</sup>

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<sup>30</sup> Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

States that have ratified these international agreements are required by law to uphold, safeguard, and implement the rights guaranteed by them. They have a responsibility to guarantee that custodial violence is outlawed, stop it from happening, look into claims, make offenders accountable, and give victims remedies.

International human rights legislation is not the only source of guidance when it comes to addressing custodial violence; regional human rights agreements also play a vital role. Regional mechanisms for defending human rights, such as the European Convention on Human Rights (ECHR), the Additional legal frameworks and protection mechanisms for human rights at the regional level are provided by the African Charter on Human and Peoples' Rights (ACHPR) and the Inter-American Convention on Human Rights (IACHR).

These regional laws frequently reflect the safeguards and requirements set by international human rights law and give people access to legal remedies for human rights breaches, such as violence committed while they are in custody. Regional human rights organisations, like the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, and the European Court of Human Rights, play a significant role in interpreting and enforcing regional human rights norms and ensuring that states are abiding by their obligations.

The prohibition of torture is regarded as a fundamental principle of international law, which It is a standard from which there can never, ever be a deviation. The fact that torture is prohibited in all circumstances and without exception demonstrates the seriousness and scope of the harm this type of interrogation-related violence causes.

According to the CAT, torture is the deliberate inflicting of great bodily or mental suffering by a public authority or with their consent, for reasons such as information gathering, punishment, or intimidation. It requires nations to criminalise and punish acts of torture committed inside their borders and expressly forbids torture under any circumstances.

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AIR 1993 SC 1960.

Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

Ibid.

States are required under the outright ban on torture to implement effective means to stop, look into, bring charges against, and punish torturers. This involves making certain that those detained are conduct swift, unbiased investigations into claims of torture, and hold offenders responsible. safeguarded against torture or other types of ill-treatment.<sup>3132</sup>

**State Responsibility and Due Diligence:** International law upholds the idea of state accountability for abuses of human rights, including violence committed in detention. States have a responsibility to defend people from violations of human rights, such as violent actions, carried out by state personnel or within their borders.

States are expected to take all necessary steps to avoid, look into, and address human rights abuses, including violence committed in a place of confinement, in accordance with the due diligence principle. This entails putting into place efficient legal, administrative, judicial, and other safeguards to stop acts of violence, guaranteeing the responsibility of offenders, and offering victims' rights.

States are also required to offer compensation to victims of custodial abuse, including reparation, rehabilitation, and promises that it won't happen again. This responsibility include not just specific individual solutions but also more extensive institutional and structural reforms that deal with the underlying causes of custodial abuse and stop it from happening again.

**International Criminal Law:** Under international criminal law, acts of custody violence, particularly those that amount to torture or other significant violations of human rights, may be considered crimes. The International Criminal Court's (ICC) authority over crimes against humanity, war crimes, and genocide is established by the Rome Statute of the ICC.

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1. <sup>31</sup> United Nations Office of the High Commissioner for Human Rights (OHCHR): The OHCHR is a key organization within the United Nations system that works on human rights issues globally. They produce reports and publications related to custodial violence and human rights abuses.

<sup>32</sup> AIR 1994

Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

AIR 1995 (4) SCC 262.

Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

AIR 2002.

The ICC may have jurisdiction over acts of torture that occur often or on a regular basis and constitute a crime against humanity. The ICC has the authority to look into and bring charges against those when national authorities are unable or unwilling to stop such crimes.

In addition to the ICC, other international and hybrid tribunals, such as the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), have also brought cases against people for crimes against humanity committed during war or under oppressive regimes, including abuses committed in detention.<sup>33</sup>

State parties have a unique responsibility to prevent, look into, and address custodial violence if they have ratified international or regional human rights agreements like the ICCPR, CAT, or regional human rights conventions.

States must implement the requirements of these instruments into their domestic legislation, set up efficient monitoring systems for detention institutions, and educate law enforcement and correctional staff on human rights principles and make sure sufferers may get hold of efficient solutions.

States must also work with regional and international human rights organisations, responding to their requests for information and reports, and implementing their recommendations and judgements. This cooperation includes disclosing the steps taken to avoid custodial violence.

## **5.2 International Human Rights Instruments and Conventions**

The promotion and defence of human rights across the world rely heavily on international human rights instruments and treaties. They offer a framework for

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<sup>33</sup> Available at <http://www.legalindia.com> (Accessed on 19th of January, 2018).

Ibid.

Ibid.

State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416 : (1985) 2 SCR 621 : (1985) 1 SCC 552 : (1985) 1 Crimes 344 : 1985 CAR 68 CrLR (SC) 73 : 1985 SCC (Cr) 127: (1985) 1 Scale 108, referred in 1999 Cri LJ, Journal Section, 36 (41).

Gauri Shankar Sharma v. State of U.P., AIR 1990 SC 709.

Available at <http://jhalsa.org> (Accessed on 25th of January, 2018).

Available at, <http://nhrc.nic.in/cdcases.htm> (accessed on 30th of January, 2018).



resolving human rights transgressions, create universal norms and duties for governments, and strive towards the creation of a more fair and equitable society. We will look at some of the most important international human rights laws and treaties in this part.

**Human Rights Universal Declaration (UDHR):** The Universal Declaration of Human Rights (UDHR), which was adopted by the UN General Assembly in 1948, is a key text in the area of human rights. It outlines a wide variety of civil, political, economic, social, and cultural rights to which everyone is entitled, regardless of race, colour, sex, language, religion, political viewpoint, national or social origin, property, birth, or other distinctions.

The Universal Declaration of Human Rights (UDHR) outlines fundamental freedoms such as the right to life, liberty, and security of person; the prohibition of torture and cruel, inhuman, or degrading treatment or punishment; the right to a fair trial; the freedom of thought, conscience, religion, expression, and assembly; and the right to an adequate standard of living, including access to food, clothing, housing, and healthcare.

Despite the fact that the UDHR is not a legally binding treaty, its concepts have been integrated into other legal documents and are now generally recognised as customary international law.

**Global Declaration on Civil and Political Rights (ICCPR):** One of the most important international human rights treaties is the ICCPR, which was enacted by the United Nations General Assembly in 1966. It explains the civic and political rights that are safeguarded. It provides legally obligatory duties for states parties under the UDHR.

The ICCPR upholds certain rights, including the right to life, the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, the right to liberty and security of person, the right to a fair trial, the freedom of thought and conscience, as well as the right to freedom of expression, assembly, and association, as well as the right to take part in public life.<sup>34</sup>

States that are ICCPR parties must uphold these rights, guarantee that they be exercised without hindrance, and offer appropriate redress in the event that they are violated. The

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<sup>34</sup> Ibid.  
Ibid.

Human Rights Committee, which keeps an eye on governments' adherence to the treaty's requirements, is also established under the ICCPR.

Adopted by the United Nations General Assembly is the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Another important international human rights pact is the ICESCR. It acknowledges the right to social security, the right to an appropriate standard of living, which includes food, clothes, and shelter, the right to health, the right to education, and the right to take part in cultural activities. It also recognises the right to employment and the right to reasonable and favourable working conditions.

According to the ICESCR, states parties must take action to gradually realise these rights to the fullest extent possible given their resources. States are required to implement laws, rules, and other policies to guarantee the fulfilment of economic, social, and cultural rights, including through enlisting the aid and collaboration of other nations.

The UN General Assembly adopted the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1965. The CERD is a historic convention that deals with racial discrimination in all of its manifestations. It outlines requirements

for states parties to end racial discrimination and advance equality as well as defining what constitutes racial discrimination.

Racist discrimination must be outlawed and eradicated in all aspects of society, including the political, economic, social, and cultural ones. The Committee on the Elimination of Racial Discrimination is a body created by the convention that examines state reports and keeps an eye on how nations are carrying out their duties.

The CEDAW is a treaty that prohibits discrimination against women in all its forms. CEDAW is a comprehensive international convention that focuses on gender equality and the abolition of discrimination against women. It was adopted by the United Nations General Assembly in 1979.

CEDAW identifies and defines discrimination against women. State parties' duties include the need to abolish discrimination and guarantee gender equality in a variety of settings, including as politics and public life, education, the workplace, healthcare,

marriage, and family relationships.

States parties are obligated to take action to get rid of discriminatory laws and practises, advance women's rights, and make sure that girls and women have equal opportunity. The Convention creates the Committee on the Elimination of Discrimination Against Women, which evaluates state party reports and keeps an eye on how governments are adhering to their commitments.

The CAT prohibits the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment. The CAT is a key international convention that was adopted by the UN General Assembly in 1984 with the goal of preventing and eliminating torture and other types of cruel treatment.

The CAT defines torture and provides an outright ban on the use of torture in all situations. States parties are obligated to implement efficient legislative, administrative, judicial, and other means to stop acts of torture inside their borders, guarantee perpetrator responsibility, and offer victims compensation.

The convention creates the Committee against Torture, which evaluates state party reports and keeps an eye on how states are carrying out their commitments.

CRC: The Convention on the Rights of the Child CRC is a comprehensive convention that outlines children's rights and places duties on nations parties to support their welfare and development. It was adopted by the UN General Assembly in 1989.

The CRC places a strong emphasis on the principles of non-discrimination, the best interests of the child, and the right to education. It also recognises the civil, political, economic, social, and cultural rights of children take part in choices that impact kids.

All essential steps must be taken by states parties to safeguard the safety, well-being, and development of children, including preventing violence, abuse, and neglect. The convention creates the Committee on the Rights of the Child, which evaluates state <sup>35</sup>party reports and keeps an eye on how governments are carrying out their duties.

The important international human rights instruments and conventions are only a few examples. The Convention on the Rights of Persons with Disabilities, the International

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<sup>35</sup> Ibid.  
Ibid.

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention for the Rights of Older Persons are just a few of the countless international agreements that address particular situations.

International human rights laws and agreements offer a group dedicated to advancing and defending human rights globally. They develop procedures for oversight and accountability, specify duties for governments, and establish universal norms. States that ratify these treaties pledge to protect and respect the rights guaranteed in them and are required to take effective measures to put these rights into effect and enforce them within their respective territories. These tools offer people and communities ways to seek justice and reparation when their rights are infringed, and they play a significant role in developing domestic legislation, policies, and practises.

### **5.3 National Legal Frameworks and Enforcement Mechanisms**

The effective domestic application of international human rights norms and agreements depends on national legal frameworks and enforcement mechanisms. They offer the framework and procedures required by the law to safeguard and advance human rights, prosecute offenders, and give victims recourse. The significance of national legal systems and the various enforcement techniques will be covered in this section.

**Constitution and Bill of Rights:** The constitution is a nation's guiding document that outlines the basic values, liberties, and rights of its people. The protection of human rights is guaranteed by a bill of rights or other equivalent constitutional clause in several nations.

Fundamental freedoms including the rights to life, liberty, and the pursuit of happiness are often protected by constitutional protections and Security of the person; freedom of speech, assembly, and religion; the right to a fair trial; and the outlawing of torture and other inhuman or humiliating practises.

The constitution sets the framework within which national laws, policies, and practises must function in addition to providing the legal basis for the protection of human rights. Additionally, it frequently gives courts the ability to uphold constitutional rights and invalidate legislation or other actions that violate them.

National laws are essential in putting human rights into effect and upholding them.

Laws should be consistent with international human rights norms and treaties and include particular safeguards and ways for people to exercise their rights.

Laws pertaining to economic and social rights, civil and political rights. human rights include things like anti-discrimination, labour rights, gender equality, child protection, and several other things. These laws outline the duties and obligations of the state in assuring the protection and promotion of certain rights, as well as the rights and obligations of people.

It is crucial to pass laws, but it is also crucial to make sure that they are implemented and enforced correctly. Resources must be allocated, oversight systems must be put in place, judges and law enforcement personnel must be trained, and the general public must be made aware of their legal rights and potential redress.

National Human Rights Institutions (NHRIs): NHRIs are essential to the national promotion and defence of human rights. They are independent organisations set up by the government to keep an eye on human rights issues, take complaints, look into breaches, and offer suggestions for resolving human rights issues.

By advising the government, performing human rights research, keeping an eye on prisons, educating the populace, and advocating for human rights reform, NHRIs may help build and execute national legislative frameworks.

NHRIs frequently have the power to investigate complaints from people who have experienced human rights breaches and suggest suitable solutions. Additionally, they are essential in educating people about human rights, running training programmes, and advising government agencies and non-profits.

The judiciary is a fundamental component of the national legal system and is essential to guaranteeing the protection and enforcement of human rights. unbiased and<sup>36</sup> independent courts have the power to interpret and enforce national legislation.

The judiciary guarantees that people have access to justice by offering a venue for the settlement of disputes, particularly those involving abuses of human rights. Courts have

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<sup>36</sup> Ibid.  
Ibid.

the authority to examine the legitimacy of government activities, consider lawsuits concerning human rights breaches, and offer victims' rights remedies.

The successful enforcement of human rights depends on having access to the legal system. It demands that courts be easily accessible, reasonably priced, and uncorrupted by improper influence. Systems of legal assistance should be in place to guarantee that people who cannot afford legal counsel can nonetheless access the court system.

Protecting human rights, looking into infractions, and holding offenders responsible are the responsibilities of law enforcement authorities and the criminal justice system. They are essential in avoiding and dealing with police brutality, assaults on prisoners, and other violations of human rights.

Law enforcement personnel should be held to high standards of conduct and undergo human rights training. Inquiries into alleged abuses of human rights should be comprehensive and fair, and they should make sure that those responsible are brought to justice. They should also respect and preserve the rights of those who are in detention.

The criminal justice system need to offer effective and impartial procedures for handling human rights cases. Assuring the right to a fair trial, the presumption of innocence, the access to legal counsel, and the outlawing of torture and other cruel treatment are a few of the rights that must be upheld.

Human rights defenders and civil society organisations are essential in promoting, educating, and maintaining public knowledge of, and respect for, human rights issues involving human rights and aiding victims.

By offering advice and expertise throughout the legislative process, carrying out research and campaigning, and acting on the ground to advance human rights, civil society organisations help shape national legal systems.

In their line of work, human rights advocates run the danger of being attacked, harassed, and threatened. National legislative frameworks should have provisions for safeguarding human rights advocates and fostering supportive environments for their work.

Mechanisms for Reporting and Monitoring: States that have ratified international human rights treaties are required to submit recurring reports to the appropriate treaty bodies, such as the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women, or the Committee Against Torture.

These reports include details on the actions taken by nations to carry out their commitments under the treaties and resolve issues relating to human rights. Treaty bodies examine these reports, speak with nations, and provide suggestions on how to enhance adherence to human rights norms.

States should set up domestic oversight, investigation, and complaint handling processes for human rights. This can include impartial commissions, ombudsman offices, and specialised organisations for keeping an eye on certain problems like police misbehaviour or jail conditions.

Regulation and Corrective Codes: Public regulation and correctional codes assume a central part in tending to custodial viciousness. It is fundamental to have clear and exhaustive regulations that unequivocally characterize custodial viciousness as a wrongdoing and give punishments to guilty parties.

Regulation ought to condemn demonstrations of custodial viciousness, including actual savagery, torment, sexual maltreatment, mental maltreatment, and disregard. It ought to likewise resolve issues like unreasonable utilization of power, erratic captures, and refusal of essential privileges and necessities to people in guardianship.

The regulation ought to guarantee that nobody is exempt from the laws that apply to everyone else, including policing and jail staff. It ought to lay out severe risk for demonstrations of custodial brutality and accommodate responsibility and disciplinary measures for culprits.<sup>37</sup>

Procedural Shields: Public lawful structures ought to consolidate procedural protections to safeguard people in authority and forestall custodial savagery. These protections ought to include:

a) Right to Lawful Guidance: Guaranteeing that people in guardianship approach

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<sup>37</sup> Ibid.

Available at, <http://nhrc.nic.in/PoliceCases.htm> (accessed on 5th of February, 2018).

legitimate portrayal and the option to talk with a lawyer of their decision. Lawful insight can give direction, safeguard their freedoms, and guarantee fair treatment all through the custodial interaction.

b) Right to Notice: Expecting specialists to educate people regarding their freedoms upon capture or confinement, including the option to inform a relative or a confided face to face about their circumstance.

c) Brief Legal Audit: Laying out instruments for brief legal survey of the legitimacy of detainment, permitting people to challenge the legitimacy of their confinement and look for solutions for any infringement.

d) Shields against Torment and Abuse: Consolidating arrangements that expressly restrict torment, awful, brutal, or corrupting treatment or discipline, and laying out viable instruments to forestall and examine charges of misuse.

Autonomous Oversight Components: To guarantee responsibility and straightforwardness, public legitimate systems ought to accommodate free oversight instruments to screen custodial offices and research charges of custodial savagery. These components can include:

a) Free Police Protests Commissions: Laying out free bodies with the power to get and research grievances against policing and suggest disciplinary or lawful activity when important.

b) Jail Inspectorates: Making free bodies answerable for leading customary examinations of penitentiaries and other custodial offices to survey their circumstances, treatment of detainees, and consistence with common liberties guidelines.

c) Public Basic freedoms Organizations: Enabling public basic freedoms foundations to screen custodial offices, explore grumblings, and make suggestions for enhancements. These foundations ought to have adequate abilities, assets, and freedom to really do their command.

Preparing and Limit Building: Public legitimate structures ought to underscore the significance of preparing and limit working for policing, jail staff, and applicable faculty associated with custodial settings. Preparing projects ought to zero in on:



a) Common freedoms and Legitimate Commitments: Giving far reaching preparing on worldwide basic liberties norms, public regulations, and commitments connected with the treatment of people in guardianship.

b) Peaceful Compromise: Preparing policing and jail staff with abilities and methods for de-acceleration, compromise, and peaceful correspondence.

c) Proficient Morals and Direct: Advancing proficient morals, uprightness, and regard for basic freedoms among those functioning in custodial settings. This incorporates resolving issues of force elements, inclinations, and biases that might add to custodial savagery.

d) Casualty Focused Approaches: Guaranteeing that preparing programs focus on a casualty focused approach, stressing the pride, prosperity, and privileges of people in care.

Announcing and Objection Systems: Public lawful structures ought to lay out available and viable revealing and grievance components for people in guardianship and their families. These systems ought to:

a) Give Privacy: Guarantee that people can report occurrences of custodial brutality unafraid of counter or further damage.

b) Work with Autonomous Examinations: Empower free examinations concerning objections of custodial savagery instantly and fair-mindedly.

c) Assurance Non-Reprisal: Disallow any type of reprisal against people who document grievances or help out examinations.<sup>38</sup>

d) Give Cures and Change: Guarantee that people who have encountered custodial viciousness approach cures, including pay, restoration, and backing administrations.

Legal Survey and Cures: Public lawful systems ought to give roads to legal audit and admittance to successful solutions for people who have encountered custodial

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<sup>38</sup> Ibid.  
Ibid

viciousness. This incorporates:

a) **Right to Record Claims:** Permitting casualties of custodial brutality to look for legitimate plan of action and document common claims against culprits or mindful specialists.

b) **Pay and Recovery:** Guaranteeing that casualties are furnished with suitable remuneration for the mischief endured and admittance to restoration administrations, including clinical and mental help.

c) **Legitimate Guide and Backing:** Laying out lawful guide frameworks to help people who have encountered custodial savagery in getting to equity and exploring the legitimate interaction.

d) **Changes and Strategy Changes:** Guaranteeing that court decisions and cures lead to more extensive changes and strategy changes to resolve foundational issues adding to custodial viciousness.

#### **5.4. Challenges and Gaps in Legal Protection and Accountability**

While legislative frameworks and accountability procedures are essential for combating involuntary confinement violence and guaranteeing the preservation of human rights, there are a number of obstacles and loopholes that prevent these processes from functioning effectively. These difficulties vary from structural problems to actual obstacles that obstruct victims' access to justice and the prosecution of offenders. We will look at some of these difficulties and gaps in this section.

**Impunity and Lack of punishment:** The pervasive culture of impunity, in which offenders frequently avoid punishment for their conduct, is one of the major obstacles to resolving custodial violence. This can be ascribed to a number of things, such as:

a) **Insufficient Investigation:** Many times, complaints of custodial abuse are not fully investigated, which results in a dearth of evidence and impeding the legal procedure. Investigation teams might not have the requisite knowledge or resources, and the investigation process might not be independent or unbiased.

b) **Inadequate Prosecution:** Even after an inquiry, there may be hesitation or carelessness in bringing the suspected offenders to justice. This may be because of

things like corruption, the sway of influential people, or a lack of political will to hold law enforcement officers responsible.

c) Inadequate Judicial Response: Cases of custodial violence may not receive enough judicial attention. It's possible for judicial procedures to be drawn out, ineffective, or vulnerable to outside forces. In some instances, judges could show bias or not have the knowledge of human rights concepts needed to decide such matters properly.

Lack of Information and Justice Access: Many victims of incarceration abuse are not aware of their legal options or encounter obstacles to doing so. This may be because of:

a) Lack of Legal Literacy: Many people, especially those who belong to marginalised and disadvantaged groups, may not be aware of their legal rights or the channels through which they might pursue justice. They can be ignorant of the possibilities of legal remedies or the availability of complaint processes.

b) Fear of Retaliation: If custodial abuse victims or their families or witnesses come out and report the abuse, they could be afraid of reprisals from the abusers or other authorities. People are frequently prevented by this dread from seeking justice and protesting the violence they have witnessed.

b) Limited Legal assistance: To properly traverse the legal system, victims of custodial violence must have access to legal assistance and representation. Legal aid resources, however, are frequently insufficient or unavailable, depriving victims of the assistance they need to pursue justice.

Insufficient Training and Professional Development: A lack of understanding and awareness of human rights norms is a result of inadequate training and professional development for law enforcement officers, prison staff, and court professionals. This<sup>39</sup> can hinder attempts to prevent and treat custodial violence and foster a culture of violence and abuse in institutions. Important topics include:

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<sup>39</sup> Available at <http://www.legalservicesindia.com> (Accessed on 31st of January, 2018).

Ibid.

S.K. Ghosh: *Torture and Rape in Police Custody (An Analysis)*, 1993, P. 15.

Ibid.

G.P. Sinha: *Post Gupta Policy (A.D. 500-750)*, 1972 P-186.

Prakash Chandra: "Usually Unrespectable face of the Indian Police: The sentinel (Himachal Pradesh) 24th April, 1992.

Lack of Human Rights Education: Prison and law enforcement personnel may not get sufficient instruction on human rights, such as the prohibition of torture, the use of force and how people in detention are handled. Without the right instruction, they could be more likely to engage in abusive behaviour or ignore instances of violence against prisoners.

b) Limited Understanding of Legal Standards: Judicial authorities could not fully comprehend domestic and international human rights laws and standards, which could affect their capacity to address situations of custodial violence. This may result in erroneous convictions, mild penalties, or conflicting rulings.

b) The Need for Cultural Sensitivity: Training programmes have to cover cultural sensitivity and awareness concerns, especially when working with varied detainee groups. Custodial violence can be reduced and human rights can be upheld by being aware of the particular requirements and weaknesses of various groups.

institutional obstacles, and Resistance to Reform: Within the criminal justice system, institutional and structural impediments can thwart attempts to curb inmate violence and advance accountability. These obstacles consist of:

Lack of Independence: To successfully combat custodial violence, investigative agencies, monitoring programmes, and the courts must be independent. These institutions' ability to function impartially may be jeopardised in some circumstances, however, by political meddling, corruption, or other issues.

b) Resistance to Change: Law enforcement organisations and prisons' cultures and procedures may be stubborn to alter, particularly when it comes to dealing with inmate violence. Internal hierarchies, loyalty to coworkers, or the conviction that particular practises are required to preserve order and control in correctional settings may all contribute to resistance.

(b) Inadequate Resources: Custodial violence cases need to be thoroughly investigated and prosecuted, which calls for significant financial, human, and technical resources. The operation of investigative agencies, the gathering of evidence, and the timeliness

of judicial processes can all be hampered by an inadequate allocation of resources.

Limited Extradition and International Cooperation: Cases of Custodial Violence may involve people who have committed crimes abroad. International cooperation and extradition procedures are essential in such situations to bring offenders accountable. To secure justice for victims of custodial abuse, however, there are obstacles to international collaboration, such as different legal systems, political factors, and constrained extradition accords.

A thorough strategy that includes the following must be used to address these issues and close the gaps in legal protection and accountability:

Strengthening National Legal Frameworks: It is important to update and improve national legal frameworks. to guarantee that the crime of custodial violence is unequivocally defined, that the punishments are reasonable and deterrent, and that procedural protections are in place to protect witnesses and victims.

Building capacity and awareness should be a priority. Training programmes on human rights laws, non-violent dispute resolution, and the management of incidents of custodial violence should be created and put into place.

c) Establishing Independent Oversight Mechanisms: Independent oversight bodies with the authority to oversee detention facilities, look into grievances, and enforce accountability should be formed. Examples include police complaints commissioners and prison inspectorates.

d) Promoting Access to Justice: It's important to work to increase legal knowledge<sup>40</sup> among the general public, especially among marginalised and vulnerable groups, and make sure that victims have access to the justice system .

e) Strengthening International Cooperation: To prevent perpetrators of custodial violence from eluding justice by travelling across borders, states should improve

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<sup>40</sup> Irfan Navi, Concept of Custodial Violence and Types of Torture, Available at, <https://www.academia.edu/9267466>, (Accessed on 10th of February, 2018).  
Available at <http://shodhganga.inflibnet.ac.in> (Accessed on 10th of February, 2018).  
Ibid.  
Ibid.

international cooperation and extradition procedures.

f) Promoting an Accountability Culture: Measures should be taken to foster an accountability culture within law enforcement organisations and incarceration facilities, including awareness campaigns, institutional changes, and accountability mechanisms that encourage reporting and allay fears of retaliation.



## CHAPTER 6



### JUDICIAL INTERPRETATION - AN APPROACH IN CUSTODIAL VIOLENCE

#### **1 6.1 Murder of George Floyd**

The death of George Floyd in Minneapolis, Minnesota, on May 25, 2020, is one prominent instance of custodial abuse in the United States. Four police officers, including Derek Chauvin, who can be seen on a video forcing his knee into George Floyd's neck for more than nine minutes despite Floyd's repeated cries that he couldn't breathe, detained the 46-year-old African American man. The event provoked worldwide anger, protests, and calls for an end to institutional racism not just in the United States but also across the world.

The George Floyd case sheds attention on a number of structural problems that surround and contribute to incarceration violence, including:

excessive and disproportionate use of force by police enforcement is highlighted by this case. Despite Floyd's cooperation and lack of resistance, the video evidence plainly showed Chauvin's knee contacting Floyd's neck and causing his death.

**Racial Profiling:** The event also made racial profiling and prejudice in law enforcement more visible. A wider discussion concerning systematic racism and the unfair treatment of marginalised populations by the criminal justice system has been spurred by Floyd's death and a number of other incidents involving the use of excessive force against persons of colour.

**Accountability for Officers Involved in Acts of Custodial Violence and Institutional Culture:** The case prompted concerns about the institutional culture inside the police department. In order to keep law enforcement officers responsible, it stressed the necessity for exhaustive investigations, open disciplinary procedures, and efficient supervision measures. **Public Outrage and Social Movements:** Floyd's killing sparked a flurry of rallies calling for justice, police reform, and an end to violence in detention facilities. Conversations on the need for structural reform to address racial inequality and custodial brutality were sparked by the event, which became a focal point for the Black Lives Matter movement.

**Legal Proceedings and Convictions:** Derek Chauvin and the other cops involved in the <sup>41</sup>George Floyd case were charged with crimes. Chauvin was accused with third-degree murder, second-degree manslaughter, and second-degree accidental death. When Chauvin was found guilty on all charges in April 2021, it was a significant step towards holding a police officer responsible for violence committed while in the custody of others.

The tragedy of George Floyd highlights both the institutional problems and the complexity of incarceration violence systemic problems that support its emergence. It emphasises how critical it is to address problems with the criminal justice system's institutional culture, disproportionate use of force, and racial prejudice.

The case also acted as a catalyst for calls for change and policy improvements. The necessity for comprehensive measures to avoid custodial violence and establish responsibility for law enforcement employees were brought up, as were debates on police reform, reinventing public

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<sup>4141</sup> Irfan Navi, Concept of Custodial Violence and Types of Torture, Available at, <https://www.academia.edu/9267466>, (Accessed on 11th of February, 2018).  
Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 10th of February, 2018).  
Ibid.  
Ibid.



safety, and the need for such measures.

Overall, the George Floyd case had a significant influence on public consciousness and helped launch a global campaign against institutional racism and violence against prisoners. It serves as a reminder of the essential need for comprehensive changes to eliminate custodial brutality, defend human rights, and advance equal justice both inside the United States and abroad.

### **“Death in police custody of Shri Udayan in Kerala.”**

Dr. Xavier Paul, who claimed that Udayan died while in police custody in the lockup at Mannarghat Police Station on January 20, 1994, brought this issue to the Commission's attention. This incident was covered by Amnesty International as well in a March 1994 release.

"The Commission observed that Udayan was beaten up a few hours before his suicide in the Sub Inspector's chamber as well as while he was being carried back to his cell on the basis of testimony provided by Shri Rashid, a prisoner of the same lock up. The Commission believed that Udayan's abuse by the police at the detention facility led to his condition. ""The Commission advised that:""

1. "A case should be filed against the police officers who tortured Udayan, and they should be tried with the utmost promptness."

"Payment of compensation of at least Rs. 1, 00,000/- to the family of Udayan."

Accordingly, Rs. 1,000,000 in compensation has been given to Udayan's family. The Director General of Police in Kerala has been requested by the Kerala Home Department to file a complaint against the police officials who tortured Udayan.

### **“Death of Punjabhai Somabhai Thakor due to Police beating : Gujarat (Case No.6123/95-96/NHRC)”**

Gujarat (Case No.6123/95-96/NHRC): Punjabhai Somabhai Thakor died after being beaten by the police.

"The deceased, Shri Punjabhai Thakor, age 55, was a suspect in a case involving the theft of an item valued at Rs. 14,695 from a resident of Napa's home. On September 18, 1995, a violation of sections 457 and 380 of the IPC was reported. On November 13, 1995, the deceased and two other suspects allegedly willingly showed up for questioning. The dead

suddenly complained of giddiness and collapsed during the inquiry. He was to be admitted to the hospital, per the PSO's instructions. He was taken to the Municipal Hospital by Head Constable Juwar Singh and another Constable named Balwant Singh. There was no access to the doctor. When the Head Constable discovered his pulse and discovered him dead. After leaving the body there, they went back to the police station to file a death report. On November 13, 1995, at about 18:00, the death occurred. The Panchanama inquest took place on November 14, 1995, at 8 a.m. Rats had chewed the body in the meanwhile.

"The Commission declined to accept the Home Department's findings that death was due to cardio-respiratory failure and not owing to police brutality, taking a severe view of the totality of the circumstances as well as the careless attitude and non-performance of duty by the police personnel. On the contrary, the Commission believed that the cumulative impact of the interrogation and the assault by police officers might have caused heart failure and death. In order to support its position, the Commission cited the post-mortem report, which noted cerebral congestion and oedema. In response, the Commission ordered the State Government to compensate<sup>42</sup> the deceased's dependent with a sum of Rs. 2 lakhs, "without prejudice to the criminal action initiated against the guilty officials."

**“Death of an accused in Police custody due to beating (Case No.351/20/97-98/CD)”**

"One Rameshwar Jat, who had been summoned to the police station for interrogation in a matter, passed away while in police custody, according to the District Magistrate of Nagaur, Rajasthan, who notified the Commission. On behalf of the police, it was claimed that the deceased remained inside the police station until 4:15 PM on July 19, 1997, at which point he peacefully left. It was also claimed that Daulat Singh Rajput called the police at 6:15 PM to report that a young guy had fallen into a well at around 5:00 PM. He was removed with the assistance of the neighbours, and Rameshwar Jat was recognised. Later, he passed away at a hospital. "The Commission concurred with the Inquest Magistrate's findings and added Rs. 50,000 to the Rs. 50,000 previously approved by the Rajasthan State Government to the legal representatives of the deceased's dependents. The State Government has submitted a compliance report to the Commission about the payment of compensation in the amount of Rs. 50,000.

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<sup>42</sup> Ibid.  
Ibid.

**“Torture in Police Custody Results in the Death of Kartik Mehto : Bihar (Case No. 8903/95-96)”**

"The Commission received a complaint from Smt. Munuwa Devi saying that her husband, Kartik Mehto, had been cruelly beaten and killed in police custody on October 4, 1995, as a result of being unlawfully arrested by the police on September 27, 1995.

"To this end, the State Government of Bihar issued a sanction dated June 10, 2000, authorising the payment of Rs. 2 lakhs, subject to its recovery from the public employee who had not paid his or her obligations. Regarding the second proposal of the Commission, it was made clear that employment would be taken into consideration in accordance with the rules set forth by the State Government for appointments based on compassionate considerations. Despite reminders, the final action taken report is still awaiting.

**“Death of Shishu Rebe due to torture in police custody : Arunachal Pradesh(Case No.74/96-97/NHRC)”**

The death of Shishu Rebe, who was detained at the Chiyangtigo police station lock-up after being taken into custody on a murder charge on March 10, 1996, and who passed away on March 29, 1996, was reported to the Commission by the Inspector General of Police (IGP) in Itanagar, Arunachal Pradesh. A final inquiry report was obtained from the Superintendent of Police (SP) Headquarters Itanagar, Government of Arunachal Pradesh, in accordance with the Commission's instructions. It stated that a Sub-Inspector had tortured the dead, and the Sub-Inspector had a charge sheet against him under Section 304 in a case that was now before the Sessions Courts, Seppa.

The State Government has also authorised payment of Rs. 30,000 to the deceased's next-of-kin. The Commission stated in its proceedings dated July 31, 2001, that the compensation amount appeared insufficient. The State Government was then given a show cause notice, requesting an explanation as to why Rs. 1 lakh should not be paid to the deceased person's next of kin and disciplinary action taken against the indiscreet public employee. In its response dated August 28, 2001, the Government of Arunachal Pradesh stated that it had no objections to paying the compensation amount as instructed by the Commission, including the amount of Rs. 30,000 that it had previously paid. Regarding the delinquent public employee's disciplinary

action, it was claimed that it will be implemented following the conclusion of the case No.3/96 u/s 304 IPC trial.

"The Commission, in its ruling dated 16 October 2001, recommended that the remaining Rs. 70,000 be given to the deceased's next-of-kin because the State Government had already paid Rs. 30,000. Since the criminal case and the departmental proceedings were separate from one another and this matter had been resolved by multiple Supreme Court rulings, the Commission ordered that departmental proceedings against the concerned official be pursued even while the criminal case was ongoing.<sup>43</sup>

**“Death of Radhey Shyam in police custody due to torture: Rajasthan (Case No.205/20/1999-2000-CD)”**

"Radhey Shyam, the son of Ram Lal Darji, a resident of Bacchapur, District Ratlam, Madhya Pradesh, died while in the custody of Gangdhar Police Station, Jhalawar District, Rajasthan, on the night of May 6, 1999, the Commission was informed by the Superintendent Police, District Jhalawar, on May 12, 1999. A report dated April 2, 2000, was delivered to the Commission by the Home (HR) Department after notice was given to the Government of Rajasthan.

The NHR Commission ordered the Government of Rajasthan to pay an additional sum of Rs. 100,000 to the deceased's next of kin because it found that the amount provided

was insufficient compensation for a human being's life. The State Government of Rajasthan responded by stating that it has made the extra amount of Rs. 1,00,000 on 19 August 2002, in compliance with the directive of the Commission.

**“Death of Karan Singh in police custody due to violence: Madhya Pradesh (Case No.1935/12/2000-2001-CD)”**

"The Commission received a communication dated 24 October 2000 from the collector and district magistrate, Morena, Madhya Pradesh, stating that, on the basis of an information received, police personnel from the Ambah Police Station had conducted a raid and arrested persons involved in gambling on 24 October 2000." One of them, Karan Singh, who was inebriated, was brought to the Ambah Hospital in the District of Morena, where he passed away, it was further claimed. On 16 February 2001, in response to a letter addressed to the

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<sup>43</sup> Ibid.

Madhya Pradesh government's home secretary, the sub divisional magistrate of Ambah delivered a copy of the findings of the magisterial inquiry, which claimed that Karan Singh had passed away on 24 October 2000 while being held at the Ambah Police Station due to custodial neglect.<sup>44</sup>

### **Death of Sher Mohammad in Police custody by torture: U.P. – Case No. 8924/95-96/NHRC”**

"The Superintendent of Police, Badaun, Uttar Pradesh, informed the Commission about Sher Mohammad s/o Abdul Rashid's death in a communication dated February 23, 1996. Abdul Rashid was an under-trial prisoner who was arrested on February 22, 1996, by the police from the Binowar police station in connection with Case No. 29/96 under the Arms Act and Case No. 20/96 under the IPC. According to reports, on February 23, 1996, Sher Mohammad—the defendant—fell unwell and passed away on the way to the District Hospital in Badaun.

The post mortem report and the magisterial enquiry report were provided to the Commission in response to the notification that was issued by the Commission. Reading the Magisterial Inquiry Report revealed that the defendant in the trial and During his interrogation for the two charges filed against him, the SHO beat up the trial prisoner, who later died as a consequence of police torture. The SHO was the subject of a criminal complaint that was filed under sections 302 and 323 of the IPC.

The National Human Rights Commission, which was established under the 1993 Act to improve the protection of citizens' civil liberties and human rights, "has the authority and duty to provide relief to victims or the heirs of victims whose right to life under Article 21 of the Constitution has been flagrantly violated by State functionaries by urging the State to undo the harm caused by its officers in appropriate cases."

In every one of these situations, the State is held vicariously accountable for the wrongdoing of its employees. When the State is asked by the Commission to provide financial assistance to the relatives of the deceased or torture victims, as the case may be, it is because the theory of strict responsibility or a duty of care on the part of the State is drawn to such circumstances. It is stated again that the State is vicariously liable for compensating the victims' heirs in the event that a person in police custody loses his life other than in accordance with the legal

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<sup>44</sup> K. Kumar, Chapter 1.pdf- Shodhganga, available at, [shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10_chapter%201.pdf) (Accessed on 20th of February, 2018)

process. The Uttar Pradesh government provided a compliance report about the payment of one lakh rupees to the next kin of deceased.

**Death of Sh. Kantosh Prahlad Jadhav, in Police Custody by torture : Latur, Maharashtra - (Case No. 5418/95-96/NHRC)”**

Kantosh Prahlad Jadhav, age 22, was arrested on October 28, 1995, at PS MIDC, Later Cr. No. 93/95, pursuant to Sections 324,504 of the IPC and 135 of the Bombay Police Act, according to information provided to the Commission by the District Superintendent of Police (DISPOL), Later, Maharashtra. In addition, he said that the <sup>45</sup>accused killed himself while still in detention by hanging himself from the ventilator in the police cell using a piece of the blanket that had been given to him that had been ripped.

"The Commission, in its proceedings dated October 20, 2004, took the matter under consideration and granted the payment of Rs. 50,000 as "interim assistance" to the surviving members of the late Kantosh Prahalad Jadhav's family. The Maharashtra government's compliance report was still awaited.

**The Death of Jayaraj and Bennicks <sup>46</sup>**

The deaths of P. Jayaraj and his son J. Bennicks in Thoothukudi, Tamil Nadu, in June 2020 are a notable instance of custodial abuse in India. Police allegedly found Jayaraj and Bennicks in violation of the lockdown regulations and detained them at the Sathankulam police station.

Reports and eyewitness testimonies claim that Jayaraj and Bennicks suffered terrible physical abuse and torture while under police custody. They allegedly suffered significant injuries after being assaulted with iron rods and lathis. They were subjected to such brutal torture that it caused their deaths a few days after their capture.

The case of Jayaraj and Bennicks sheds light on a number of crucial elements of prison abuse in India.

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<sup>45</sup> K. Kumar, Chapter 1.pdf- Shodhganga, available at, [shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10_chapter%201.pdf) (Accessed on 20th of February, 2018)

<sup>46</sup>MANU/SC/0225/2009.

**Power Abuse:** The event shows how law enforcement officers abused their positions of authority. Instead of following the law and safeguarding residents, the police have been accused of torturing and using violence against those who are in their care.

**Lack of Accountability:** The case highlights the police force's lack of accountability. The participating police officers originally made an effort to hide the torture by asserting that the fatalities were caused by natural causes. Only after widespread outcry and pressure from the public was a serious investigation launched, which resulted in the arrest and suspension of the implicated police officers.

The case emphasises the issue of impunity and the prolonged nature of justice in relation to incarceration abuse. The alleged police officers weren't detained for several months, and the judicial process is still going on. Justice taking longer than expected exacerbates the victims' families' grief and despair while also undermining public confidence in the criminal justice system.

**Lack of Appropriate Protocols and Training:** The event highlights the police force's lack of Appropriate Protocols and Training on the Treatment of Persons in Custody. It underlines the necessity of thorough training programmes that emphasise respect for human rights, a ban on torture, and legal use of force.

**popular indignation and Demands for Justice:** The deaths of Jayaraj and Bennicks while in custody led to nationwide demonstrations and popular indignation. People protested in the streets, calling for the victims' justice advocating for police change to stop additional incidences of incarceration abuse.

Custodial violence in India must be addressed immediately, as the cases of Jayaraj and Bennicks serve as a clear reminder. It emphasises the significance of enhancing police training and protocols, strengthening accountability systems, and guaranteeing timely and objective investigations into claims of custodial brutality.

The event also highlights the importance of activism and public awareness in drawing attention to instances of custodial brutality and driving reforms that are required. It emphasises how important media, human rights organisations, and civil society organisations are to uncovering such crimes and securing justice for the victims.

The situation involving Jayaraj and Bennicks further emphasises the requirement for



extensive legislative changes, such as the establishment of protections against violence while in custody, the creation of independent watchdog organisations, and the strict application of laws against torture and cruel treatment.<sup>47</sup>

In the end, this case highlights the significance of a coordinated effort from all stakeholders, including the government, law enforcement organisations, court, civil society, and the general public, to eradicate prison violence, defend human rights, and secure justice for victims and their families.

### **"Custodial death of Shri Bundoo in Uttar Pradesh."**

In his fax message dated 14 October 1995, the Senior Superintendent of Police in Moradabad informed that a Bundoo had passed away while being held in jail. The Commission acknowledged the issue and requested a report from the Uttar Pradesh government. The Government reported that a case under section 302/301 IPC in crime no. 273/95 was filed<sup>48</sup> at Police Station Chandpur, Bijnore District, on October 12, 1995, against four listed individuals. An SHO was assigned to investigate the case. On October 13, two of the accused were taken into custody in the morning, and during questioning, one of them gave details about the incident's location. He was escorted to the location for identification in course after being handcuffed. families. Additionally, he had said he would direct the police to any weapons used in the crime when they were found.

"Two police SHOs and a large number of constables arrived at the location. Bundoo abruptly got out of the car and landed in front of a moving bus. He sustained significant wounds, which ultimately resulted in his passing away at Moradabad District Hospital. The SSP stated that the two concerned Inspectors had been instructed to attend the roll call and that departmental action will shortly be issued.

The Commission carefully examined the lengthy reports and the supporting documentation. Accepting this version of events as accurate, the Commission determined that the deceased

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<sup>47</sup> K. Kumar, Chapter 1.pdf- Shodhganga, available at, [shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream-/10603/2714-z/.../10_chapter%201.pdf) (Accessed on 20th of February, 2018)

<sup>48</sup> Available on, [http://shodhganga.inflibnet.ac.in/bitstream/10603/2714/6/06\\_abstract.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/2714/6/06_abstract.pdf) (Accessed on 22nd of February, 2018)

Available at <http://www.shodhganga.inflibnet.ac.in> (Accessed on 23rd of February, 2018).

Ibid.

Ibid.

Ibid.



suffered severe injuries when he leapt from before a rushing bus, he tumbled out of a moving vehicle. There was no question that a large number of police officers were also going in the vehicle with the dead, who was already shackled. The constables were responsible for making sure the handcuffed suspect did not escape from the vehicle. The fact that there were so many police officers in the jeep when the deceased leaped out of it demonstrated grave carelessness on the part of the police guard.

The Commission advised that an investigation be started very away, and that the relevant police officers and constables should receive suitable punishment if found guilty of carelessness.

The Commission believed that the next of kin of the deceased should get compensation, along with One lakh rupees in compensation was suggested in this regard. The government would be allowed to recover its costs from the unruly police personnel as it saw fit. The distribution of the amount of recovered would be possible.

"The State Government said in a letter dated September 15, 1998 that an investigation is being done into the subject. The Chief Judicial Magistrate of Moradabad approved this report despite the fact that no police officer was found guilty. A sum totaling Rs. 1 lakh has already been handed to the next of kin in terms of compensation.<sup>49</sup>

W H I T E B L A C K  
L E G A L

## **CHAPTER 7**

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<sup>49</sup> Ibid.

Inderjeet v. State of Uttar Pradesh, AIR 1979 SC 1867.  
Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.  
1993 SCR (2) 581 IR 1997 SC 610.

## Preventive Measures and Remedial Strategies

A comprehensive strategy that tackles the underlying causes, fosters responsibility, and protects the rights and dignity of people in care is necessary for preventing custodial violence and putting effective corrective measures into place. The following are important preventative measures and corrective tactics that can be used:

Legal reforms and policy adjustments: a) Stabilise the legal system by passing or amending legislation that plainly criminalises involuntary restraint and sets forth certain sanctions for offenders.

b) Put protections in place: Ensure that laws and regulations contain clauses that protect the rights of people held in custody, such as the ban on torture and the right to be represented by counsel.

b) Independent control systems: Establish impartial monitoring organisations to keep an eye on detention institutions, look into complaints, and prosecute offenders.

d) Protection for whistleblowers: Those who disclose instances of abuse or misbehaviour in a detention setting risk reprisal.

Training and capacity building: a) Human rights training: Give law enforcement officers, prison staff, and judicial personnel thorough human rights training, emphasising the outlawry of custodial violence and the significance of respecting the rights and dignity of those in custody.

b) Incorporate cultural sensitivity training to meet the unique needs and vulnerabilities of various groups held in custody, such as women, children, members of racial and ethnic minorities, and LGBTQ+ people.

b) Rules regarding the use of force Establish precise rules for when force should be used, placing a focus on de-escalation and non-violent conflict resolution methods.

d) Professional development: Constantly fund the training of jail and law enforcement personnel to keep them abreast of changes in human rights best practises and standards.<sup>50</sup>

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<sup>50</sup> (1979) 2 SCC 143.  
Section 220, the Indian Penal Code, 1860.  
Justice Dr. Anand.

Promoting Accountability and Transparency: a) Effective investigation and prosecution: Make sure that claims of custodial violence are promptly, impartially, and independently investigated, and that offenders are prosecuted to the maximum extent of the law.

In order to encourage victims, witnesses, and whistleblowers to come forward without fear of retaliation, implement witness protection programmes.

b) Judicial reforms: Enhance the judiciary's capacity and expertise to adequately address cases of custodial violence, guaranteeing fair trials and appropriate punishments.

d) Data collection and reporting: Put in place reliable methods for gathering information on in-custody violence, including demographic information on victims, offenders, and the results of investigations and prosecutions.

Public Awareness and Community Involvement: a) Outreach and Education Programmes: Run public education and awareness programmes to raise awareness communities about their legal options and grounds for remedy in incidents of incarceration abuse.

In order to establish trust, promote communication, and stop incidences of custodial violence, promote community engagement and involvement in policing activities.

c) Cooperation with civil society organisations: Promote alliances with groups working on victim's rights, criminal justice reform, and human rights in order to encourage accountability and offer assistance to victims and their families.

Exchange of best practises: Through multilateral organisations, such as the United Nations and regional human rights agencies, facilitate international collaboration and the exchange of best practises in preventing and treating custodial violence.

b) Ratification and execution of international agreements: Encourage nations to ratify and execute agreements and conventions relating to the ban of Custodial Violence

It is crucial to remember that these preventative actions and corrective plans should be carried out holistically and in concert with all pertinent parties, including as government agencies, law enforcement, civil society, and the judicial system. The efficacy of these strategies must

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Afzalaur Rahman v. Emperor, AIR 1943 FC 18.

Ratanlal and Dhirajlal, the Indian Penal Code, 32 (Lexis Nexis) 1053 (2010).

be regularly monitored and evaluated in order to pinpoint any areas that need more focus and development. Societies may endeavour to avoid custodial violence, defend human rights, and advance an accountability and respect-based culture in custodial settings by taking a holistic approach.

### **7.1 Policy Reforms and Legislative Changes**

For the criminal justice system to effectively reduce incarceration violence and foster an accountability culture, legislative and policy reforms are necessary. The following are some crucial areas where legislation and policy changes can have a big impact:

**Criminalising Custodial Violence:** a) **Clear term:** Include both physical and psychological abuse, torture, and ill-treatment in custodial settings in the term of custodial violence in national legislation.

b) **Strict Penalties:** Establish severe punishments for those who commit acts of custodial abuse, making sure they are appropriate for the gravity of the offence and acting as a deterrence.

c) **No Immunity:** To ensure that no one is above the law, legislative provisions that give immunity or protection to law enforcement agents accused of using physical force against detainees must be removed.

**Procedures safeguards and detainee rights:**

a) **Access to Legal Counsel:** Ensure that detainees have the right to legal representation from the time of their detention until they are released from custody.

a) **Arrest Notification:** Require quick notification of the arrest and the location of detention to the family or another designated individual.<sup>51</sup>

c) **Medical Examination:** Upon admission to custody, make sure that detainees undergo a comprehensive medical examination to note any existing injuries or indications of

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<sup>51</sup> Custodial Deaths and Torture in India, Asian Legal Resource Centre, Available at <http://www.alrc.net/doc/mainfile.php/61written/276/> (Accessed on 15th of March, 2018).

Custodial Deaths and Torture in India, Asian Legal Resource Centre, Available at <http://www.alrc.net/doc/mainfile.php/61written/276/> (Accessed on 15th of March, 2018).  
Ibid.

mistreatment.

d) Regular Review of Detention: Create procedures for routine, independent assessments of the detention settings, including detainee access to medical and psychological care as well as independent monitoring bodies' visits.

Independent Complaints Mechanisms: a) Independent Oversight and Accountability Mechanisms: Create alternative grievance channels to gather and look into reports of incarceration abuse so that victims, their loved ones, and witnesses may come forward without being afraid of being punished.

b) Internal Disciplinary Procedures: Establish stringent internal disciplinary policies within law enforcement organisations to guarantee prompt and objective investigations into claims of custodial violence, as well as adequate sanctions for those found guilty.

c) External monitoring agencies: To better monitor and look into incidents of custodial violence, strengthen the function and independence of external monitoring agencies such as police complaints commissioners, ombudsman offices, or human rights commissions.

d) Whistleblower Protection: Enact legislation that offers whistleblowers who reveal involuntary corporal punishment complete protection, protecting their safety and immunity from reprisal.

Development of comprehensive human rights training programmes for law enforcement is part of the training and capacity-building process for authorities, inmates, and judges, with a focus on the outlawing of corporal punishment, upholding human rights, and adopting nondiscriminatory procedures.

b) De-escalation methods: To improve the abilities of law enforcement personnel in handling difficult circumstances without resorting to violence, provide specialised training in non-violent conflict resolution, de-escalation methods, and the proper use of force.

Programmes for sensitization

(c) To stop discriminatory acts and violence, regularly run programmes to raise awareness of and knowledge of the rights and vulnerabilities of many groups, including women, children, minorities, and marginalised populations.

Collaboration and International Standards: a) International Cooperation: Work with regional and international organisations, including the United Nations, to share best practises, draw lessons from past successes, and harmonise domestic law with international human rights norms.

b) Ratification and Implementation: To show a commitment to preventing custodial violence and upholding human rights standards, ratify and implement pertinent international conventions and treaties, such as the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Data gathering and analysis:

Establish a centralised and comprehensive database to collect, analyse, and track data on incidences of custodial violence, including details on the victims, offenders, and the results of inquiries and prosecutions.

b) study and Analysis: Encourage study on incarceration violence in order to comprehend its root causes, spot trends, and create methods for prevention and accountability that are supported by the best available data.

These legal and policy measures, combined with their successful implementation and enforcement, can significantly reduce the amount of violence that occurs in prisons and jails, safeguard the rights of inmates, and foster a culture of respect, transparency, and accountability within the criminal justice system.<sup>52</sup>

## **7.2 Strengthening Law Enforcement Institutions and Training**

Addressing incarceration violence and fostering professionalism, accountability, and respect for human rights need strengthening law enforcement organisations and strengthening

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<sup>52</sup> Ibid.

Nandini Sathpathy v. P.L. Dani, 1964.

Public Prosecutor v. Sheikh Ibrahim, AIR 1978 SC 1025.

Ibid.

Kashmeri Devi v. Delhi Admn., AIR 1988 SC 1323.

Nilabati Behera v. State of Orissa, AIR 1993 SC 1960.

training programmes. To fulfil these objectives, the following tactics can be used:

The following steps should be taken to professionalise law enforcement institutions: a) recruiting and Selection: Adopt stringent and open recruiting and selection procedures to make sure that only those with the required credentials, skills, and moral standards are employed.

b) Code of Conduct: Create and uphold a thorough code of conduct that spells out the proper conduct, moral obligations, and duties of law enforcement agents.

c) Internal Accountability Mechanisms: Create internal oversight and punishment systems for law enforcement personnel, such as integrity or professional standards divisions or units for internal affairs.

d) Whistleblower Protection: Create safeguards against retribution for law enforcement officers who disclose misbehaviour or violence in detention, fostering an environment of accountability and openness.

a) Human Rights Education: Integrate human rights education into training curriculum, highlighting the significance of preserving the rights and dignity of those in detention.

b) Prohibition of Torture and Ill-Treatment: Provide targeted training on the prohibition of torture and ill-treatment, educating people on their legal responsibilities and the repercussions of violent behaviour while in a person's care.

c) Conflict Resolution and Communication Skills: To help law enforcement professionals deal with difficult circumstances without resorting to violence, provide thorough training in conflict resolution methods, communication abilities, and de-escalation tactics.

d) Sensitization Programmes: Provide law enforcement personnel with specialised training to make them aware of the specific requirements, Rights and vulnerabilities of many demographics, including women, children, minorities, and underrepresented groups.

a) Mental Health Training: Include instruction on identifying and resolving mental health problems in detainees to enable law enforcement personnel to offer suitable support and service referrals.

Cooperation with External Experts and Civil Society:

a) Partnerships with Civil Society Organisations: Work together with academic institutions, human rights organisations, and civil society organisations to create and deliver training programmes, share best practises, and contribute knowledge in fields like non-violent policing, victim support, and human rights

b) Engage external experts and independent auditors to perform routine evaluations of law enforcement training programmes in order to ensure their efficacy, relevance, and compliance with global standards and best practises.

Cooperation and Exchange on a Global Scale: Facilitate cross-border learning and exchange programmes so that law enforcement professionals may gain knowledge from other nations' experiences and methods for reducing custodial violence, fostering professionalism, and upholding human rights.

b) Training Cooperation: Develop standardised training modules, exchange resources, and offer technical support to boost law enforcement training programmes by working with international organisations like Interpol and the United Nations.

Implement frequent in-service training programmes to keep law enforcement professionals up to date on changing regulations, guidelines, and industry standards pertaining to professional behaviour, human rights, and the avoidance of custodial violence.<sup>53</sup>

b) Leadership Development: Provide law enforcement personnel with leadership training programmes to promote a culture of moral leadership, responsibility, and oversight within law enforcement organisations.

Monitoring and assessment: a) Performance Evaluation: Set up performance assessment mechanisms that gauge how closely law enforcement employees adhere to moral guidelines, human rights ideals, and the avoidance of violence in detention.

b) Impact Evaluation: Evaluate training programmes' effects on decreasing instances of

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<sup>53</sup> International Covenant on Civil and Political Rights (ICCPR), available at <http://www.2.ohchr.org/english/law/ccpr.htm> (Accessed on 17th of March, 2018).

Article 9(5) of ICCPR.

State of Madhya Pradesh v. Shyamsunder Twivedi, (1995) 4 SCC 262.

Laws against Illegal Arrest, Available at [http://www.nhrc.nic.in/ar95\\_96.htm](http://www.nhrc.nic.in/ar95_96.htm) (Accessed on 15th March, 2018).

Ashen v. The State, 1987 Cri, LJ 1750.

Section 51, 52, and 53 of the Code of Criminal Procedure, 1973.



custodial violence, enhancing professionalism, and advancing human rights on a regular basis.

Societies may promote a culture of professionalism, respect for human rights, and responsibility within the criminal justice system by bolstering law enforcement institutions and improving training programmes. These steps can help to reduce violence in detention facilities, increase public confidence, and guarantee the security and wellbeing of those who are being held.

### 1 **7.3 Effective Oversight and Accountability Mechanisms**

For the preservation of human rights, custodial violence prevention, and holding offenders accountable, efficient supervision and accountability systems are essential. Establishing strong supervision and accountability processes can be facilitated by the following tactics:

Independent complaint and inquiry organisations:

Establish independent commissions or committees with the express responsibility for receiving and looking into accusations of custodial abuse by law enforcement personnel. These organisations ought to be able to undertake fair and open investigations.

b) Ombudsman Offices: Ensure that they have the resources and power necessary to properly carry out their duties by strengthening the role and independence of ombudsman offices in order to accept and handle complaints relating to custodial violence and misconduct.

c) Specialised Units: Establish specialised units within the judiciary or law enforcement to look into complaints includes forensic investigators, victim advocates, and educated staff members with knowledge of human rights to combat custodial brutality.

Transparency and data collection: a) event reporting systems: Create thorough procedures that require the reporting of all acts of violence against people in custody, including with information on the parties involved, the nature of the event, and any injuries that may have been incurred. Whistleblowers and witnesses should be protected by these systems.

b) Data Collection and Analysis: Create a centralised database to gather, examine, and keep

track of information on episodes of custodial violence, including information on the victims' and offenders' backgrounds, the scene of the event, and the findings of any subsequent inquiries. This data may be regularly reported on and analysed to find trends, patterns, and problem areas.

c) Reports that are Publicly Accessible: Publish frequent reports on the results of investigations into incidents of Custodial Violence guaranteeing openness and responsibility. To foster more confidence in the accountability procedures, these reports should be made available to the public.<sup>54</sup>

External Monitoring and Inspection: a) Independent Monitoring Bodies: Give these organisations the authority to regularly and secretly visit detention institutions, such as human rights commissions, civil society groups, and national preventative procedures. Access to prisoners, employees, and pertinent records need to be unlimited for these bodies.

b) External Inspections: Periodic external inspections of detention facilities by qualified and impartial inspectors are carried out to judge whether or not human rights standards are being followed, including the elimination of detention violence. The results of these inspections should be swiftly implemented.

a) Establish specialised courts or fast-track processes to address incidents of custodial violence quickly, ensuring victims receive justice in a timely manner and encouraging responsibility.

b) Judicial Training: To improve judges' comprehension of and competence to handle such matters effectively and equitably, provide judges and prosecutors with specialised training on human rights norms, including the prohibition of custodial violence.

Establishing strong review and appeal systems would help to guarantee that judgements and sentencing in situations of custodial violence are properly scrutinised and reviewed.

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<sup>54</sup> International Covenant on Civil and Political Rights (ICCPR), available at <http://www.2.ohchr.org/english/law/ccpr.htm> (Accessed on 17th of March, 2018).

Article 9(5) of ICCPR.

State of Madhya Pradesh v. Shyamsunder Twivedi, (1995) 4 SCC 262.

Laws against Illegal Arrest, Available at [http://www.nhrc.nic.in/ar95\\_96.htm](http://www.nhrc.nic.in/ar95_96.htm) (Accessed on 15th March, 2018).

Ashen v. The State, 1987 Cri, LJ 1750.

Section 51, 52, and 53 of the Code of Criminal Procedure, 1973.

Cooperation with External Experts and Civil Society:

In order to monitor detention institutions, help victims, and promote accountability and reforms, foster alliances with civil society organisations and human rights groups.

b) Expert Involvement: Work with outside professionals to help investigations, such as human rights attorneys, psychologists, and forensic specialists into custodial violence cases.

Building capacity and educating oversight bodies:

Provide thorough training programmes on human rights standards, investigative tactics, and best practises for preventing custodial violence for oversight bodies, including investigators, monitors, and inspectors.

a) Cooperation with International Organisations: Cooperate with international organisations, including the United Nations and regional human rights organisations, to get access to knowledge, training materials, and advice on developing efficient supervision and accountability procedures.

Societies may guarantee that custodial violence is avoided, offenders are held responsible, and the rights and dignity of those in custody are safeguarded by putting in place efficient supervision and accountability procedures. These procedures support the rule of law and help to increase public confidence in the criminal justice system.

#### **7.4 Victim Support and Rehabilitation Programs**

Programmes for victim assistance and rehabilitation are essential elements in combating violence against prisoners<sup>55</sup>. These initiatives are designed to help victims recover from their physical and mental trauma by offering them support, safety, and rehabilitation. The following tactics can be used to successfully assist and rehabilitate victims of incarceration

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<sup>55</sup> A.K. Sahdev v. Ramesh Nanji Shah, 1998 CrLJ 2645 at 2650 (Bom.)  
Shakila Abdul Gafar Khan v. Vasanttraghunath Dhoble, 2004 (1) GCD 812 at 823 (SC)  
Justice Y.V. Chandrachud and V.R. Manohar, The Code of Criminal Procedure, (Wadhwa Nagpur, 18th Edition, 2006) P. 114  
Mukesh Kumar v. State, 1990 CrLJ 1923.  
Section 56 and 57, The Code of Criminal Procedure, 1973.  
Section 160, The Code of Criminal Procedure, 1973.  
Section 176, The Code of Criminal Procedure, 1973.  
Bhai Jasbir Singh v. State of Punjab, 1995 CrLJ 285 (P&H) cf. P.C. Banerjee, Criminal Trial and Investigation, (Orient Publishing CO. Allahabad, 3rd edition, 2003) P.222.

abuse:

quick Medical and Psychosocial Support: a) Medical treatment: Ensure that victims of custodial abuse have quick access to high-quality medical treatment to treat any wounds or health problems brought on by the abuse.

b) Psychosocial Support: Offer victims specialised psychosocial support services, such as therapy, trauma-informed treatment, and mental health care. The specific requirements and experiences of victims of custodial abuse should be taken into consideration by these programmes.

Legal Aid and Access to Justice: a) Legal Aid: Assist victims of custodial abuse with the legal system, educate them on their legal rights, and help them seek redress.

b) Victim Advocacy: Create victim advocacy initiatives to help victims during court cases, ensuring that their rights are upheld and that their voices are heard.

c) Simplified Legal Procedures: To help victims participate in the court system, remove obstacles, and guarantee their access to justice, simplify legal procedures and give victims precise information.

Rehabilitation and reintegration: a) Rehabilitation Programmes: Create extensive rehabilitation plans that are specifically suited to the requirements of victims, including physical rehabilitation, career growth, educational opportunities, and the improvement of life skills.

b) Reintegration Support: Help victims who have been released from custody reintegrate into society from incarceration, such as housing assistance, employment assistance, and social integration initiatives.

c) Victim Compensation: Create victim compensation programmes to give victims of custodial violence financial support, acknowledge their suffering, and aid in their recovery and reintegration.

Develop gender-sensitive support programmes for women who have undergone prison abuse, emphasising their specific needs and vulnerabilities. This is an example of specialised assistance for vulnerable groups.

b) Support for Minors: Create specialised support programmes for kids who have experienced

abuse while in custody, assuring their security, well-being, and accessibility to resources for education and rehabilitation.

Support for Marginalised Groups: Create support initiatives that take into consideration the unique requirements and circumstances of marginalised populations, including refugees, people of colour, and people with disabilities.<sup>56</sup>

Public Awareness Campaigns: Start public awareness campaigns to inform communities about the effects of incarceration violence, the rights of victims, and the value of help and rehabilitation.

Provide training programmes for professionals working with victims, such as law enforcement officers, medical staff, and social workers, to improve their comprehension of custodial violence, trauma-informed treatment, and victim assistance.

Collaboration and coordination: a) Multi-sectoral cooperation: Encourage cooperation among relevant parties, such as governmental organisations, civil society organisations, and community-based organisations, to guarantee a coordinated and all-encompassing approach to victim care and rehabilitation.

b) Referral Networks: Create networks of referral amongst service providers to provide smooth and all-encompassing assistance for victims, including health care, legal assistance, and psychosocial support.

c) International collaboration: Take part in international collaboration to exchange best practises, get access to resources, and gain knowledge from programmes for victim assistance and rehabilitation that have been successfully implemented in other nations.

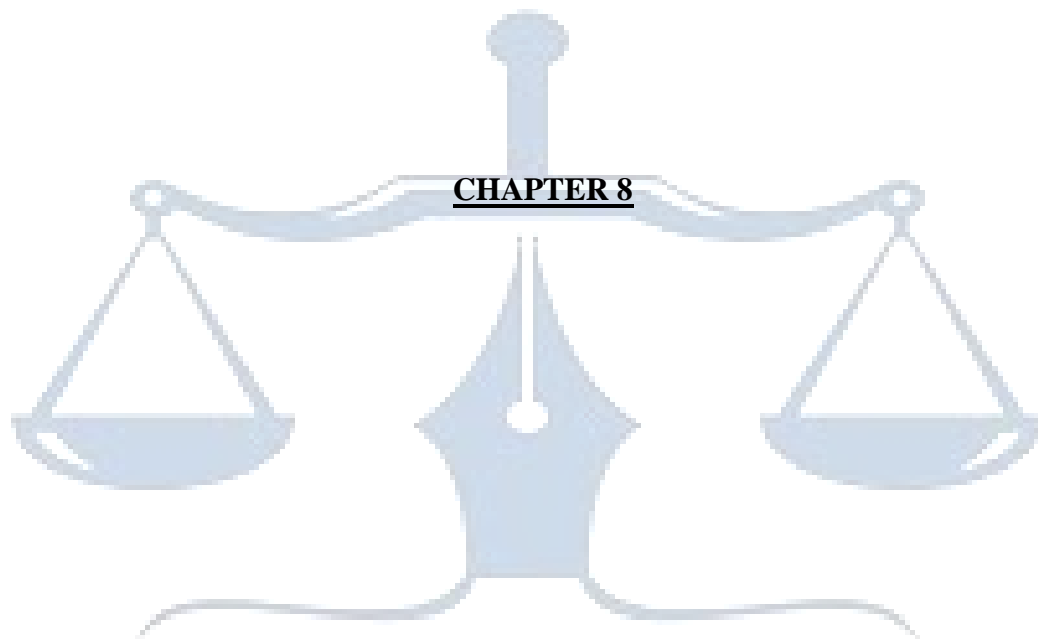
Societies may empower victims of custodial abuse, aid in their recovery and reintegration, and restore their dignity and rights by putting victim support and rehabilitation programmes into place. These initiatives are essential in combating the effects of in-custody abuse and

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<sup>56</sup> AIR 1997 SC 610.

All India Conference of Inspectors General of Police (1959) adopted the Code of Conduct for police in India, Ministry of Home Affairs.

fostering an inclusive and just society.<sup>57</sup>



## **CHAPTER 8**

# W H I T E B L A C K L E G A L

## **CONCLUSION**

After all the discussion, Custodial abuse is a serious human rights violation and a big problem that has to be dealt with on many different levels. Recognising how custodial violence affects people, communities, and the whole judicial system is crucial. Custodial abuse has far-reaching effects, including damage to one's physical and mental health as well as a decline in legitimacy and public confidence.

A comprehensive strategy including preventative measures, accountability procedures, victim

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<sup>57</sup> Available at, [http://shodhganga.inflibnet.ac.in/bitstream/10603/2714/11/11\\_chapter%202.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/2714/11/11_chapter%202.pdf) (Accessed on 20th of March, 2018).

support systems, and rehabilitation programmes is required to successfully address prison violence. In order to foster professionalism, respect for human rights, and responsibility within the criminal justice system, policy reforms, legislative amendments, and the building of law enforcement institutions and training programmes are crucial.

Power dynamics, institutional culture, personal psychological and behavioural characteristics, and intersectionality are some of the elements that interact, contribute to the prevalence of violence in institutions. In order to create focused treatments and preventative efforts, it is essential to understand these characteristics.

Violence committed while in custody has negative effects on human rights and dignity. Fairness, justice, and the rule of law are all compromised. In order to successfully prevent, investigate, and prosecute custodial abuse, it is crucial to preserve national legal frameworks as well as international human rights standards and duties.

Custodial abuse has substantial social and societal impacts, including a decline in faith in law enforcement, social instability, and the continuation of violence. In addition to individual responsibility, combating custodial violence necessitates a group effort that incorporates the civil society, community involvement, and awareness-raising.

One important effect of custodial violence is the decline of legitimacy and public trust. Transparency, accountability, and efficient supervision procedures are necessary for regaining public trust. To create effective supervision and accountability procedures, law enforcement authorities must collaborate with civil society organisations, international organisations, and outside experts.

A basis for combating custodial violence is provided by legal frameworks and international duties. The criteria that nations should follow in avoiding custodial abuse and defending the rights of those in custody are outlined in international human rights agreements and conventions. A crucial part in ensuring adherence to these standards is played by national legal systems and enforcement mechanisms.

Despite the presence of legal frameworks, issues with legal accountability and protection continue. Underreporting, a lack of independent investigations, and impunity are some of these difficulties for offenders and little victim support. Implementing efficient monitoring, accountability systems, and providing resources for victim care and rehabilitation are necessary to fill these gaps.

The case study of custodial abuse in India demonstrates the difficulties and complications of dealing with this problem. The necessity of cooperation among numerous parties as well as the significance of preventative measures, legal reforms, victim assistance initiatives, and so on are all highlighted.

In conclusion, combating custodial violence necessitates a thorough and multifaceted strategy that includes victim assistance, accountability procedures, preventive measures, and rehabilitation programmes. To ensure the preservation of human rights, the abolition of custodial violence, and the restoration of dignity for all people in detention, governments, law enforcement organisations, civil society organisations, and communities must commit to working together.



## **SUGGESTIONS**

### Strengthening Legal Frameworks

Enhance current laws and policies to address custodial abuse so that they are thorough, functional, and compliant with global human rights norms.

Establish precise policies and processes, including means for reporting, investigating, and prosecuting, for managing claims of custodial violence.

Take into account enacting explicit legislation that classifies custodial abuse as a crime and specifies suitable punishments.

Enhance capacity building and training: Provide thorough and continuous training programmes on human rights, nonviolent dispute resolution, and professional behaviour for the judiciary, law enforcement, and other relevant stakeholders.

Include particular training courses on custodial violence prevention, detection, and reaction. Develop and deliver specialised training programmes in conjunction with international organisations and subject matter experts.

Create Separate Oversight Mechanisms: Create independent, well-funded oversight organisations to keep an eye on detention centres and look into claims of abuse there.

By giving them the appropriate authority, resources, and defence against outside influence, we



can ensure the independence and integrity of these monitoring organisations. In order to exchange information, undertake joint investigations, and encourage accountability, oversight organisations, law enforcement agencies, and civil society organisations should cooperate and coordinate more closely.

**Enhance Data Gathering and Reporting:** Create a standardised system for gathering and examining data on incidents of custodial violence, including specifics on the victims, offenders, forms of abuse, and the findings of investigations.

Publish reports based on this information on a regular basis to raise awareness of the problem and openness. Make sure that victims' and witnesses' privacy and confidentiality are protected when gathering and data exchange.

**Create programmes for victim support and rehabilitation:** Create and put into action comprehensive victim support programmes that offer victims of incarceration violence instant access to medical and emotional care.

Ascertain that victims have access to legal aid and assistance at all stages of the legal process, including assistance with complaint filing, navigating the judicial system, and requesting compensation.

Assist victims' long-term rehabilitation and reintegration by working with NGOs and civil society groups to meet their socioeconomic, psychological, and physical needs.

**Encourage cooperation and collaboration** To effectively handle incarceration violence, encourage cooperation between governmental organisations, the criminal justice system, civil society organisations, and human rights organisations.

Talk to marginalised populations and vulnerable groups to better understand their unique needs and difficulties and to include their viewpoints in the creation and implementation of policies.

**Sensitise the Public:**

To inform the public about incarceration violence, its effects, and the necessity of avoiding and reporting such acts, organise public awareness campaigns.

Engage with media outlets to guarantee accurate and ethical reporting on instances of custodial brutality, emphasising the need for justice and responsibility.

Encourage community participation and debate in order to advance a culture of responsibility, nonviolence, and respect for human rights.

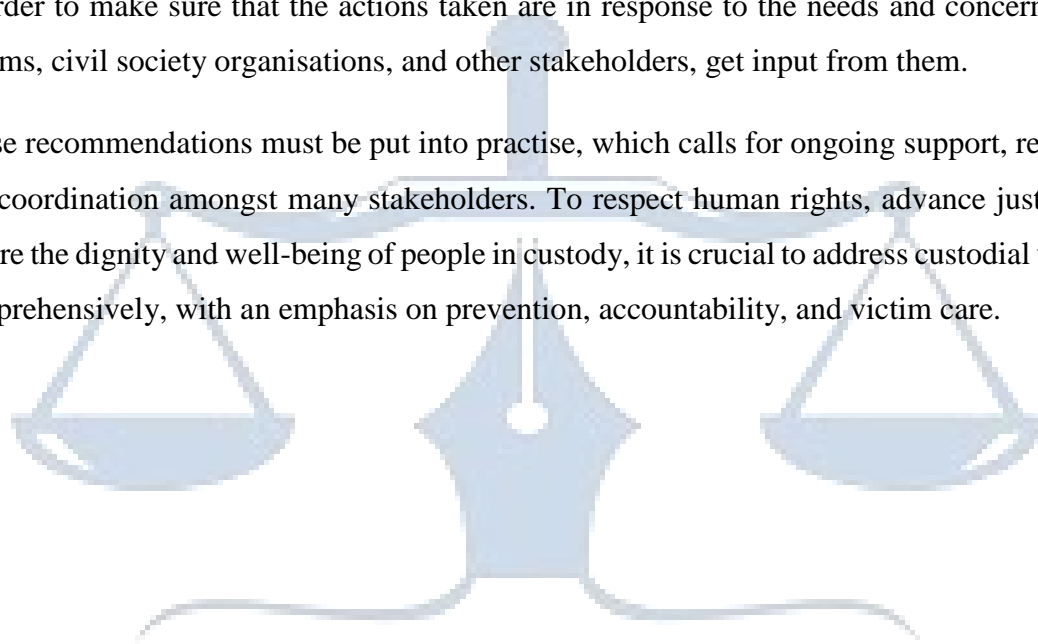
Watch and Assess:

Create systems to track the success of the reforms, interventions, and preventative actions taken to reduce incarceration violence.

Regularly assess the results of policies and programmes, and then adapt as appropriate in light of the results.

In order to make sure that the actions taken are in response to the needs and concerns of the victims, civil society organisations, and other stakeholders, get input from them.

These recommendations must be put into practise, which calls for ongoing support, resources, and coordination amongst many stakeholders. To respect human rights, advance justice, and ensure the dignity and well-being of people in custody, it is crucial to address custodial violence comprehensively, with an emphasis on prevention, accountability, and victim care.



W H I T E B L A C K  
L E G A L