
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**CUSTODIAL VIOLENCE IN INDIA: ITS IMPACT AND
RECOMMENDATIONS**- Bhavay Malhotra & Manav Bhalla¹**Abstract**

The paper seeks to focus on the issue of custodial violence inflicted by the police on an arrested person resulting in custodial torture sometimes leading to death. A critical analysis of the various provisions of the statutes related to custodial violence and the rights of the accused in India, and the study of various case laws concerning the issue will help us facilitate certain recommendations to limit the issue towards the end of the paper.

Keywords: Custodial Violence, Custodial Torture, Custodial Death, Police**Introduction**

Custodial crimes are one of the worst crimes in a civilized society governed by law and directly flout the basic rights of humans and their dignity. It is more serious in the sense that personnel who are considered to be the protector of law, themselves commit such brutal offenses against the citizens. These crimes, when committed under the shield of authority, between the four corners of police-station, and lock-ups where victims are helpless, depict the worst face of the Indian criminal justice system. However, despite there being several constitutional and statutory provisions under The Indian Penal Code, 1860² (hereinafter referred to as IPC) and The Code of Criminal Procedure, 1973³ (hereinafter referred to as Cr.P.C.) aimed at safeguarding the rights of an accused, the crimes against individual liberty and freedom by the police officers have not stopped in reality. The increase in the number of death and torture in custody can assume such alarming proportions that they can affect the credibility of the rule of law and of the criminal

¹ Students at O.P. Jindal Global University

² Pen. Code (1860)

³ Code Crim. Proc. (1973)

justice system itself.⁴

Custodial crimes are divided between two broad categories: Custodial torture, and death. Article 1(1) of UNCAT (United Nations Convention Against Torture) provides the definition of torture: ‘Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.’⁵ However, section 3 of Prevention of Torture Bill, 2010 defines the torture as ‘whoever, being a public servant or being abetted by a public servant or with the consent or acquiescence of a public servant, intentionally does any act for the purposes to obtain from him or a third person such information or a confession which causes— i) grievous hurt to any person; or ii) danger to life, limb or health (whether mental or physical) of any person, is said to inflict torture: Provided that nothing contained in this section shall apply to any pain, hurt or danger as aforementioned caused by any act, which is inflicted in accordance with any procedure established by law or justified by law.’⁶ Whereas, custodial death would mean the death of the accused, in the custody of the police. However, these practices put a huge question upon the functions and efficiency of the police officers as regards to the work and duties directed upon them by the rule of law. Through this paper, we aim to cover the history and the current situation of law in regards to custodial deaths and torture as well as protection of citizens ‘right to life and liberty’⁷ and protection against arrest and detention⁸ whilst going through the provisions of IPC/CrPC/IEA which open the scope of exploitation by the police officers, and the ones which provide safeguards to the accused. We will talk about the history of exploitation of power by the executive and state upon the citizens of the country since

⁴ *D.K. Basu v. State of Bengal*, (1997) 1 SCC 416, AIR 1997 SC 610 (India)

⁵ <https://redress.org/wp-content/uploads/2018/10/REDRESS-Guide-to-UNCAT-2018.pdf> (The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A Guide to Reporting to the Committee against Torture, September 2018)

⁶ <http://thelawbrigade.com/wp-content/uploads/2019/05/Komal-Sarthak.pdf> (Custodial Torture: A Gross Violation of Human Rights by Komal Kapoor and Sarhak Kapila)

⁷ India Const. art. 21

⁸ India Const. art. 22

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

independence and what led to the enactment of the rules and amendments that are deemed to be good laws today in this context in Part I. Part II deals with the psyche of the police and the reasons that lead them to resort to such practices. Further, Part III will deal with the primary motive and ends that are sought to be achieved by inflicting torture on the arrested people. Part IV, V and VI talks about the provisions in different statutes that provide safeguards to the accused and those which can be misused by the police in the stages of arrest, investigation, bail, imprisonment, and the trial. Part VII will discuss the provisions which deal specifically with the procedure to be followed if a death occurs in police custody and the repercussion the authorities can face if convicted of committing such custodial torture or murder, whereas Part VIII discusses the failure to bring those who inflict such crimes to justice and hold the police responsible for their misconduct.

I. History of Custodial Deaths and Torture in India

Police brutality existed throughout British Colonial period. The Madras Commission Report, 1855 is evidence which shows that police brutality existed at that point of time.⁹ The study was done to understand the cause behind the police brutality. The Report was surprising in the sense that “on one hand, it remains one of the most systematic documentations of torture in either colonial or postcolonial India while, on the other hand, it was primarily meant to absolve the British of any role in the persistence of torture despite the use of violence to ensure the continuation of the colonial regime.” It means that the institution of police was used as an instrument to limit the voices against the colonizers. Similarly, it can be argued that the police in post-colonial India is used as an instrument to crush the voices of dissent. Since the independence, India has seen various laws that deal with preventive detention, anti-terrorism and domestic deployment of military, from the PD Act¹⁰ to the NSA¹¹, from TADA¹² to the amended UAPA¹³ and AFSPA.¹⁴ The objective of all of these has been bona-fide and in the interest of national security but they have, often been used to crush opposition or any dissent as well as the basic human rights by bypassing the procedures laid down in various statutes like

⁹ <http://www.jstor.com/stable/j.ctt9qfzrj.8> (Jurisprudence on Torture and Interrogations in India, Transnational Torture p. 134)

¹⁰ Preventive Detention Act, India Code (1950)

¹¹ National Security Act, India Code (1980)

¹² Terrorist and Disruptive Activities (Prevention) Act, India Code (1985)

¹³ The Unlawful Activities (Prevention) Act, India Code (1967)

¹⁴ Armed Forces (Special Powers) Act, India Code (1958)

the CrPC and the Indian Evidence Act, 1872¹⁵ (hereinafter referred to as IEA). Similarly, even the guidelines laid out by these statutes have been misused, or rather not been followed at all by certain authorities which was deemed as a threat to the justice system by the Hon'ble Supreme Court in the past. The best examples being the atrocities committed against Sikh families by the Punjab police in 1980s-1990s, or the human rights abuses in Jammu and Kashmir that continue till today, or isolated incidents brought to light in cases like *Joginder Singh v. State of U.P.*¹⁶ and *Tukaram v. State of Maharashtra*.¹⁷ As ambitious as India's laws were in regards to custodial torture, in action they seemed quite tolerable of the same. These situations and instances led to various guidelines being led down to limit the same, like in the *152nd Report of Law Commission (1994)*¹⁸ or by the Supreme Court in *D.K. Basu v. State of West Bengal (1996)*.¹⁹

Hence, despite the apparent change in the role of police in post colonial India, 'there was neither a radical break from the colonial origins of police institutions nor a transformation of the legal system as a whole.'²⁰ The colonial origin of police as being the 'repressive instrument' can be seen as a significant reason of on going custodial torture in India. Upendra Baxi writes that 'Indian police is basically a colonial police, both in its organization and operations: it is basically a repressive force.'²¹ He further notes that the repressive mindset of police exists because the elite government wishes it to exist. In other words, it is the lack of initiative on behalf of the government which prevents the transformatory reforms in the police functioning, and its institution. He states that it is not only the 'colonial-repressive police organization' but also a 'colonial repressive political regime.'²² Therefore, in the next section, the paper would highlight the mindset of police behind inflicting violence against the accused.

II. Psychology of the Police: Do Means Justify Ends?

Police brutality has become one of the significant reasons for increasing disaffection among the general public against them. But the question that arises is 'why police officers tend to ignore

¹⁵ Indian Evidence Act, India Code (1972)

¹⁶ *Joginder Singh v. State of U.P.*, (1994) 4 SCC 260, AIR 1994 SC 1349 (India)

¹⁷ *Tukaram v. State of Maharashtra*, (1979) 2 SCC 143 (India)

¹⁸ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission)

¹⁹ *D.K. Basu v. State of Bengal*, (1997) 1 SCC 416, AIR 1997 SC 610 (India)

²⁰ <http://www.jstor.com/stable/j.ctt9qfzrj.8> (Jurisprudence on Torture and Interrogations in India, Transnational Torture p.135)

²¹ Ibid.

²² Ibid.

this disaffection and continue to indulge themselves in such inhumane practices.’ There are various rationales behind the exercise of violence on accused by the police officers. First, the inadequate training, and facilities provided to police officers make them frustrated which is often released on the accused.²³ Not only in the cases of custodial violence but, because of this, people regularly have to face awful behavior of the police officers even in regards to trivial matters. Second, the political interference in the phase of investigation makes it more complicated for the officers to conduct fair research despite the fact that police officers have absolute powers to investigate the matters in the way they wish to.²⁴ Third, the efficiency of police is judged by the single criterion of increasing crime rates in society. If the crime rates tend to increase, police are criticized by the media and the general public. As a result, the police use short-cut methods to conclude the investigation, through the means of violence to either record the confession or to get the information about the case which would have taken a lot more time. Fourth, the exaggeration of minor incidents by the media in front of the society leads to an adverse impact on the moral of police force. Officials including senior police officers, judicial officers, and civil servants agree with the practice of “exaggeration” by the media.²⁵ Fifth, an analysis of the National Police Commission shows that an investigating officer is able to devote only 37 per cent of his time in investigational work while the rest of his time is taken up by other duties connected with maintenance of VIPs, petition inquiries, court attendances etc.²⁶ In other words, the lack of workforce in police stations makes it difficult for them to give the required time for investigation resulting in the use of violence to extract information from the accused.

However, these reasons cannot be used as a justification to inflict violence on the accused but help us to understand the situations that limit the police to conduct a free and fair investigation. Hence, reforms should be brought in to improve the condition of police officers which could have a positive impact over the process of investigation limiting the violence against the accused. Now that we have discussed the background and mindset of the police, let’s discuss the primary motive for them to resort to such practices i.e. confession.

²³ <https://www.jstor.org/stable/43953348> (Custodial Torture in Police Station In India: A Radical Assessment by Nirman Arora, p. 523)

²⁴ Ibid.

²⁵ <http://www.jstor.com/stable/j.ctt9qfzrj.8> (Jurisprudence on Torture and Interrogations in India, Transnational Torture)

²⁶ <https://www.jstor.org/stable/43953348> (Custodial Torture in Police Station In India: A Radical Assessment by Nirman Arora)

III. Recording of Confession: Motive

The subject of confession becomes the most relevant reason for custodial violence. Confession by the accused is the most potent weapon of the prosecution to prove its case against the defense. It was noted in the case of *D.K. Basu (Supra)* that 'oftentimes police had resorted to third degree methods like torture or techniques of screening arrest by either not recording them or describing the deprivation of liberty merely as a prolonged interrogation with the sole view of securing evidence or a confession'. In order to deal with confession, being the most significant motive behind custodial torture, we need to first understand the law of confession in criminal justice system of India. The various provisions of law relating to confession are as follows:

- (a) Section 161(2) provides that any person being interrogated by the police is only bound to answer truly those questions answers to which cannot potentially expose him to a criminal charge or to a penalty or a forfeiture. (ii) Section 162 provides that no statement of a witness recorded by the police can be used for anything other than to contradict his statement before the court. This was clarified in the case of *Ramprasad v. State of Maharashtra*²⁷ where it was held that the statement of witness to an investigating officer cannot be used as evidence. (iii) Section 163 provides that no police officer shall induce, threat or promise to make the accused to do or say anything. (iv) Additionally, Section 164 provides that a magistrate must ensure that a confession or a statement being made by an accused is completely voluntary and has not been induced. This was upheld in the case of *Shivappa v. State of Karnataka*²⁸. Even Article 20(3) of our constitution provides that no accused shall be compelled to be a witness against himself.

Confession of an accused has been a controversial aspect in the reading of the provisions of the IEA. Section 24 reiterates that a confession is only admissible when it is voluntary. If it is made under any inducement, threat or promise, it is inadmissible in criminal proceedings. Further, a confession made to the police officer is not admissible under Section 25 and 26 of the IEA. In light of all these provisions, J. Ramkumar in the case of *Murukeshan v. State of Kerala*²⁹ had asked, 'When a confession by an accused person to a Police Officer is totally

²⁷ *Ramprasad v. State of Maharashtra*, AIR 1999 SC 1969: 1999 (5) SCC 30 (India)

²⁸ *Shivappa v. State of Karnataka*, (1995) 2 SCC 76, AIR 1995 SC 980 (India)

²⁹ *Murukeshan v. State of Kerala*, 2010 (2) KJL361 (India)

inadmissible in evidence, what is the earthly purpose served by torturing an accused person for extracting confession?'. The answer to this question lies in a simple reading of Section 27 of the IEA, which provides an escape valve against the prohibitions imposed by all of the above mentioned sections and puts a powerful weapon in the hands of the police. It carves out an exception in respect to cases where the confession of the accused leads to the discovery of a fact related to the offense. 'In other words, the disincentive to torture would be eliminated if the police could hope, for example, to recover the proceeds of a theft by mistreating the accused'³⁰. A plethora of case laws on this provision are sufficient to show that this weapon has been extensively used by the police to extract confessions by use of force and coercion. If one reads between the lines, it is clear that 'the very existence of this section creates an impression or an urge to resort to means not desirable or legitimate so that the section is pressed into service in situations never intended by the legislature'³¹. However, the constitutionality of this Section has been upheld in multiple case laws till date. In *State of Bombay v. Kathi Kalu and Ors.*,³² it was held that Section 27 is intra vires of the constitution and can be called upon as long as the information obtained is without any form of coercion. More recently, in *Navaneethakrishnan v. The State by Inspector of Police*,³³ the section was again defended with the claim that it incorporates the 'theory of confirmation of subsequent fact'.

Having laid, in detail, the law regarding confession, it is now important to show through case laws, several situations in which police officers were held guilty for using violence to elicit the confession statement from the accused. In *Shame Kant v. State of Maharashtra*,³⁴ the police officer (accused) was held guilty under section 330 of the IPC for causing injury to two suspected accused in a theft crime. As a result of the injuries inflicted upon them by the police officers, one of the accused died just outside the courtroom of the magistrate. In another case, *State of MP v. Shyam Sunder Trivedi and Ors.*,³⁵ the Supreme Court convicted the accused under section 330 and various other sections of IPC setting aside the judgement of the High

³⁰ <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1120&context=cjil> [Customary International Law and Torture: The Case of India (Chicago Journal of International Law Volume 2, p.85)]

³¹ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission), p.43

³² *State of Bombay v. Kathi Kalu and Ors.*, 1961 AIR 1808, 1962, SCR (3) 10 (India)

³³ *Navaneethakrishnan v. The State by Inspector of Police*, Criminal Appeal No.1134 (2013) (India)

³⁴ *Shame Kant v. State of Maharashtra*, 1992 SCC (Cri) 765 (India)

³⁵ *State of MP v. Shyam Sunder Trivedi and Ors.*, (1995) 4 SCC 262 (India)

court which gave the orders of acquittal to the accused. In the said case, a person named Nathu Ram was picked up by the police and in order to elicit the confession from the Nathu Ram, police officers tortured him to an extent that he died in the police lock up. The court in the said judgment stated that ‘the High court and the Trial court exhibited a total lack of sensitivity and “couldn't care less” attitude in appreciating the evidence on record and thereby condoning the barbarous third degree methods which are still being used at some police stations, despite being illegal.’ In January 2016, the court in *State of Maharashtra v. Chandrakant Rajaram Kamble & Ors.*,³⁶ convicted four police officers, again, for causing culpable homicide and causing grievous hurt to furnish confession from the accused.

The issue with using violence to extract confession is also admitted by N. Ramachandran, a former director-general of police and the current President of the Indian Police Foundation, an independent nongovernmental organization, in front of Human Rights Watch where he said that ‘even today in India, we do not depend on forensics to the level we need to. It is sub-optimally used and instead police, especially junior level police officials, resort to extracting confessions using third-degree methods. Incidents have come down but are still happening. Police are not trained or equipped in the use of forensics. Most forensic labs in the country are understaffed. Tens of thousands of cases will be pending for want of forensic results.’³⁷

The next section highlights the powers of police and how are they misused at various stages of investigation.

IV. Arrest and Investigation

‘If power tends to corrupt in the political arena, it is equally true to say that a situation of authority corrupts the authority’.³⁸ Arrest means taking a person into custody by legal authority, where the arrestee is deprived of his personal liberty which leads him into a state of vulnerability and at the mercy of the ‘authorities’. However, investigation is the process of ascertaining facts and circumstances of a case, which involve interrogation and collection of evidence, and is mostly a power conferred upon the police without any direct interference from

³⁶ *Court of Sessions, Greater Bombay, at Mumbai*, SC 309, 2014 (India)

³⁷ <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> (Human Rights Watch Report: “Bound by Brotherhood”– India’s Failure to End Killings in Police Custody, December 19, 2016)

³⁸ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission), p.4

the judiciary as to 'how' it shall be conducted.³⁹ It was held in *Emperor v. Khwaja Nazir Ahmed*⁴⁰ that 'just as it is essential that everyone accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry.' The same view was later reiterated in *Abhinandan Jha v. Dinesh Msihra*⁴¹ that powers of the police and the court are not overlapping; instead they are complementary to each other.

The autonomy to arrest and investigate bestows immense authority and responsibility on the police force which can, and is often misused leading to direct violations of several constitutional and statutory provisions enacted to safeguard the 'right to life and liberty' of the accused. Subsequently, we will look at how the power of arrest and the procedure of investigation can be misused by the police to exercise custodial violence with potential to get away with the same.

(i) Misuse of provisions while making an arrest

Arrest is not merely a power to curtail one's freedom and liberty, be it temporarily, but also one that can malign someone's reputation and can have impacts in more ways than one might expect. The absolute powers of police to investigate encourage the policemen to investigate the matter in a way that it causes prejudice to the accused. Section 41 of the CrPC was initially enacted on the recommendation of *177th Report of Law Commission (2001)*⁴² by the Parliament amid the increasing number of unlawful arrests despite the guidelines laid down in the case of *D.K Basu(Supra)*.⁴³ Section 41 empowers the police to arrest someone without warrant when a person commits a cognisable offense 'in the presence of the police officer' or if the police officer has 'reasonable suspicion' that the person has committed that offense. The autonomy given to the police can easily be used to manipulate facts and make arrests without any actual reason. In a report by the Human Rights watch, a case was reported which says that a person named Janathan was detained illegally by the police in civic uniform.⁴⁴ The person was

³⁹ Doctrine of 'non interference'

⁴⁰ *Emperor v. Khwaja Nazir Ahmed*, (1945) 47 BOMLR 245 (India)

⁴¹ *Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117 (India)

⁴² See LAW COMMISSION OF INDIA, ONE HUNDRED AND SEVENTY SEVENTH REPORT ON LAW RELATING TO ARREST (Law Commission of India, New Delhi, 1994) (177th Report of Law Commission)

⁴³ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 469 (India)

⁴⁴ <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> (Human

taken by the police without identifying themselves as police which is one of the mandatory conditions under section 41. His brother told the Human Rights Watch that on finding that his brother was being taken by four unknown people, he reported at the police station but, there was no clue about his brother's whereabouts. Later, his brother was declared dead of heart attack, by the police officers. In the said case, B.V Raman Kumar, Deputy Commissioner of Police, told the media that inspector Mahesh did not take orders from the senior officers to arrest Janathan⁴⁵. Several provisions were violated in this case including section 50 of Crpc which provides that its the duty of the police officers to inform the accused that he is entitled to be released on bail.

Further, the power is even more extensive when viewed in light of Section 151 of CrPC which confers the police, the right to make arrests even prior to the commission of an offence, which is still nothing compared to the preventive detention powers of the state as laid down in the highly controversial National Security Act, 1980. This issue has been highlighted in various cases pertaining to different preventive detention laws in the country and one such case being *Shahaji Vishnu Lokhande v. M.P. Mirgali*⁴⁶. The court decides on a writ petition filed by the petitioners detained under Section 151, which was subsequently allowed and the remand of the accused was deemed way beyond the scope of the section. A lot of cases have had at its focal point the constitutionality of this provision, which is upheld by the Supreme Court but has also been limited by more guidelines than mentioned in the Cr.P.C itself. In *Ahmed Noormohmed Bhatti v. State of Gujarat*⁴⁷, the Supreme Court reiterated the view that even the guidelines laid down in the case of *Joginder Singh (Supra)* and *D.K. Basu (Supra)* are implicitly also applicable to Section 151 of the Cr.P.C.

(ii) Misuse of provision related to Interrogation

Once the offense is 'supposedly' committed, the police can begin with the investigation even without the order of a Magistrate on their own discretion under Section 154(1) and 156(1) of the Cr.P.C. In case, the police officer rejects the information and does not start the

Rights Watch Report: "Bound by Brotherhood"– India's Failure to End Killings in Police Custody, December 19, 2016)

⁴⁵ <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> (Human Rights Watch Report: "Bound by Brotherhood"– India's Failure to End Killings in Police Custody, December 19, 2016)

⁴⁶ *Vishu Lokhande v. M.P. Mirgali*, (1986) 88 BOMLR 114 (India)

⁴⁷ *Ahmed Noormohmed Bhatti v. State of Gujarat*, AIR 2005 SC 2115 (India)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

investigation, the only immediate recourse to a person whose information has not been recorded is incorporated in Section 154(3) and allows him to write a 'post' to the superintendent regarding the same and he may do so with the said information as he may think is right. Once the investigation has started, the police can collect evidence and information from witnesses under Section 161 and 165 of the said act. However, there is nothing that can stop the police from keeping such statements of a person or evidence that may put their own interests in danger from the Magistrate. Further, unless the potential witness is connected to or mentioned in the investigation, he cannot even go to the Magistrate and get his statement recorded under Section 164 of the Cr.P.C. for an ongoing inquiry/trial. This position of law was cleared in *Joginder Nahak v. State of Orissa*.⁴⁸ Even if this is so the case, the Magistrate can choose to not record the statement, as was held in *Valsamma Mst. v. State of Rajasthan*.⁴⁹ The issue with the cases of custodial violence is that these powers coupled with the place where such crimes take place (police custody/lockup), make it extremely easy for the police to manipulate facts and alter evidence in their favour. The only witnesses to these crimes that happen within the four walls of the lockup are their fellow officers who very often, for the sake of brotherhood or hierarchy in power, choose to refrain from revealing the truth and become accomplice to the heinous acts.

(iii) Rights of an Individual at the Time of Arrest: Safeguards

In light of the above mentioned powers and motives of the police to commit such violence, it is also important to talk about the rights and safeguards that every individual or accused has during his arrest and investigation of the offense, besides the safeguards to confessions that we have already discussed above. The Constitution has various provisions in this regard, primarily Article 21 and 22. (i) Although Article 21 does not contain any express provision against custodial torture or crimes, it has been interpreted in various ways so as to not exclude the same from its purview.⁵⁰ (ii) Article 22 provides various rights to a person at the time of arrest, including right to know the grounds of arrest, right to a legal council and right to be brought before a Magistrate within 24 hours.

Coming to the CrPC, there are several guidelines and limitations in the exercise of the power conferred by Section 41 in regards to the arrest of a person accused of an offence punishable

⁴⁸ *Joginder Nahak v. State of Orissa*, (2000) 1 SCC 272, AIR 1999 SC 2565 (India)

⁴⁹ *Valsamma Mst. v. State of Rajasthan*, (1997) 2 Crimes 651 (Raj) (India)

⁵⁰ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission), p.11

with a sentence of 7 years or less. Section 46(3) also states that the right to arrest does not give the police a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life. Further, Section 49 starts with a categorical prohibition and commands that an arrested person shall not be subjected to unnecessary restraint. Lastly, Section 54 even confers upon the accused the right to get himself medically examined immediately by a medical officer. It has also been held in *Sheela Barse v. State of Maharashtra*⁵¹ that it is the duty of the Magistrate to inform the arrested person of the said right.

It is also a settled position of law that, 'The power to arrest is one thing, the justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so.'⁵²

V. Custody and Bail

As mentioned before, the accused is most vulnerable when he/she is in the custody of the police. The police may act outside of its jurisdiction and various case laws have shown that they have committed some of the most heinous crimes on the accused during his confinement in the police lockup. The various provisions in CrPC provide for certain procedural safeguards that must be followed by the police immediately following the arrest. In addition to Sections 46, 49 and 54 (Supra), Section 56 and 57 also bestow obligations on the police officers to minimise the time of the accused in police custody post his arrest. The former makes it necessary for the police officer, arresting without a warrant, to bring the arrested person to a Magistrate without any unnecessary delay and the latter provides that such a person cannot be detained by the police for more than 24 hours, exclusive of the time necessary for the journey from place of arrest to the Magistrate. Despite these Sections the police have had a history of overcoming these limitations by simply keeping the arrested person in custody for longer than the time prescribed or not registering some arrests in the police diary itself, which have led to a number of abductions and disappearances. Between 1984 and 1994, in Punjab alone, there were found to be 2097 cases of illegal detainment and cremations by the police.⁵³ These cases of police brutality came to light even more after the abduction of Jaswant Singh Khalra, who was responsible for this discovery, by the Punjab police and the writ petition of Habeas Corpus by

⁵¹ *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378: 1983 Cri. LJ 642 (India)

⁵² *Joginder Singh v. State of U.P.*, (1994) 4 SCC 260, AIR 1994 SC 1349 (India)

⁵³ http://www.ensaaf-org.jklaw.net/publications/other/judicial_blackout.pdf [Judicial Impunity for Disappearances in Punjab, India (Harvard Human Rights Journal, Volume 15 p.271)]

his wife that followed.⁵⁴

In case investigation cannot be completed within 24 hours, as provided in Section 57, the procedure to be followed is laid down in Section 167 of the same statute. The Section provides that once the arrestee has been brought to the Magistrate, in such a scenario the Magistrate may authorise further detention of the person for a term of up to 90 or 60 days depending on the offence, whatever he deems fit. However, out of the total time that the accused is in detention, he/she can only be in police custody for 15 days and not more, any detention post that period will be in judicial custody only. This was clarified in *CBI v. Anupam J. Kulkarni*.⁵⁵ However, just because an accused is in judicial custody and not in police custody does not mean that he/she is not being deprived of his liberty and freedom. Hence, if the police cannot submit the charge sheet by the end of the term of the detention (upto 60 or 90 days), the accused shall be deemed to have been released on bail as under Chapter XXXIII of the CrPC.⁵⁶ But then there is Section 173(8), which lets the investigating agency (mostly police) go on and keep making a prayer in cases where it has filed a final report that the probe is still going on and to allow this to go for time immemorial. In practice, the police succeed in extending the period of detention by filing incomplete charge sheets and banking upon the provisions of Section 173(8) to do this. There is no period stipulated for exercising this power in this Section which not only defeats the purpose of Section 167 and Section 173(1) but also blatantly violates Article 21 of the Constitution by letting the police (or the concerned investigating agency) inflict mental restraint and torture on the accused even after they do not have him in their custody.⁵⁷

Article 21 of the Constitution has been interpreted time and time again to provide safeguards against torture or violence while in custody. The following examples have been mentioned in the *152nd Law Commission Report (Supra)*; (i) Punishment which has an element of torture is unconstitutional.⁵⁸ (ii) Prison restrictions amounting to torture, pressure and infliction going beyond what the court has ordered are unconstitutional.⁵⁹ (iii) An under-trial or convicted

⁵⁴ *Mrs. Paramjit Kaur v. State of Punjab and Ors.*, 1996 SCC (7) 20, JT 1995 (8) 418 (India)

⁵⁵ *CBI V. Anupam J. Kulkarni*, (1992) 3 SCC 141; AIR 1992 SC 1768 (India)

⁵⁶ *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC272; AIR 1993 SC 1 (India)

⁵⁷ <https://www.indialegallive.com/viewpoint/section-173-8-of-crpc-when-police-drag-their-feet> (Aabad Ponda, When Police Drag Their Feet)

⁵⁸ *Inderjeet v. State of U.P.*, AIR 1975 SC 1867 (India)

⁵⁹ *Sheela Batse v. State of Maharashtra*, AIR 1983 SC 378; 1983 Cri. LJ 642 (India)

prisoner cannot be restricted to physical or mental restraint.⁶⁰

VI. Trial

Trial is the process through which the judiciary determines criminal liability of the accused. It is the burden of the prosecution to prove the guilt of the accused and until then, the accused is assumed to be innocent. The entire spirit of the Constitution and the Cr.P.C. lies in the fact that the custody and liberty of the accused is entirely governed by the authority and sanction of the court of law beyond the initial 24 hours of detainment by the police post the arrest, especially that of determining his guilt. By no twisted interpretation can this power be passed on to the investigation agency. However, this is often not the case and the police tend to keep the arrestee in their custody longer than they are authorised to. The data from 2010 to 2015 of the National Crime Records Bureau shows that 416 of 591 people who died in police custody died before police obtained an order from a magistrate authorizing their custody.⁶¹

The constitution has been interpreted time and time again to give the right of a fair and speedy trial to every accused in the court. This includes equal treatment before the court, to be tried without undue delay, to be tried in one's presence, to be represented by a legal representative of one's choice and etc. Several judgments have highlighted that such rights fall under the broad scope of Article 21, including landmark judgments like *Hussainara v. State of Bihar*⁶² and *Maneka Gandhi v. Union of India*.⁶³ In the latter it was held that 'Article 21 confers a fundamental right on every person to not be deprived of his life or liberty except in accordance with the procedure prescribed by law. If any person is deprived of his liberty by a procedure which is not 'reasonable, fair and just' then he shall call upon his fundamental right under Article 21 and secure his release. Now, depriving a person of his personal liberty cannot be 'reasonable, fair or just' unless he is ensured expeditious trial which is an intrinsic part of Article 21 and does not lead to unnecessarily prolonged detainment of the person in custody.'

VII. Response to Commission of Custodial Death/Torture

⁶⁰ *Sunil Batra v. Delhi Administration*, AIR 1968 SC 1975 (India)

⁶¹ <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> (Human Rights Watch Report: "Bound by Brotherhood"— India's Failure to End Killings in Police Custody, December 19, 2016)

⁶² *Hussainara v. State of Bihar*, 1979 AIR 1369, 1979 SCR (3) 532 (India)

⁶³ *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621 (India)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

In case if there is any instance of torture or death within police lockup, there are set guidelines that have to be followed to bring justice to those that have taken the law in their own hands or misused the same. However, as mentioned earlier, these guidelines are often not followed and the police tend to cover up and manipulate the evidence to disguise and hide their actions or its result. Information is withheld from the judiciary and fellow officers who were witnesses refuse to testify in favour of the victim/deceased. In the following sections we will discuss what exactly are these guidelines that need to be followed and what actions can be taken against the police once the case of custodial violence is proved

(i) Procedure in the Case of a Custodial Death

Section 174 of the Cr.P.C. provides that as soon as a police officer is informed of a death of any person, he must report or give information of the same to the nearest executive Magistrate immediately. In case death (or disappearance or rape of a woman) occurs while in police custody, Section 176(1A) provides that an inquiry shall be held by the concerned Magistrate himself. Despite many arguing that this judicial probe is mandatory as implied by the word 'shall', it has not been implemented much since its addition. An annual report of the National Crime Records Bureau recorded a total of 1303 cases of death or disappearance of persons in police custody between 2005 and 2017. Of this total, 827 of the cases where the person was not remanded by court, inquiry was ordered in only 166 of the cases. This goes on to show the failure of the judiciary in recent times to take this matter up as one of the concerns, which it indeed is.⁶⁴

(ii) Action against the Police

The IPC also takes note of the problem and therefore, keeping in mind the same, various provisions were laid to deter the police officers from committing violence against the person in custody. Section 166 provides that if any public servant disobeyed any direction of the law in such a manner that the act committed by such disobedience causes injury to a person either internationally, or knowingly shall be punished with a term which may extend to one year, or fine, or with both. The injury in the said section includes harm caused to body, mind, reputation, and property of the person.⁶⁵ Section 167 lays down the punishment of public

⁶⁴ <https://ncrb.gov.in/crime-in-india-table-additional-table-and-chapter-contents> (Crimes in India | Report by National Crime Records Bureau)

⁶⁵ https://sg.inflibnet.ac.in/bitstream/10603/75380/14/14_chapter%206.pdf (Chapter 6 - Constitutional and

servants to frame the illegal document with intent of causing injury. Section 330 and 331 are the most significant provisions in the IPC in regards to the custodial violence. Both of these sections lay down the offence of voluntarily causing injury/grave injury to extort the confession which may lead to detection of offence or misconduct. Further, Section 340 to 348 deal with the wrongful restraint, and wrongful confinement. It is also necessary to talk about section 348 because it punishes the act of confining a person to extort confession for the purpose of detection of offense and misconduct. Section 376(2) deals with rape committed by police officer under his custody and finally, section 376B to 376D deal with; intercourse by public servant with woman in custody, or intercourse by superintendent of jail, or remand home, or Intercourse by member of the management or staff of hospital with an inmate of the hospital.

VIII. Failure to Hold Police Accountable for Custodial Violence.

The victims of custodial violence mostly belong from the lower strata of the society⁶⁶ and often find no recourse against the police officers by whom brutality is committed either against the individual himself or against any other family members. Due to the lack of financial and political backing, they are unable to protect their interest against the heinous crimes committed by the people who are considered to be the protector of law. Cases studied for the purpose of this research paper depicts the pattern that there is some form of social unrest or protest against the incident of custodial violence which puts a burden on police officers to investigate those matters. Therefore, in absence of any such protest, it becomes difficult for the victims to get justice when they are left alone to fight against police brutality. However, section 154 of the Cr.P.C. makes it mandatory for the police officer to register an FIR,⁶⁷ but it is not new to the people that officers hardly entertain the request to register the FIRs when brought before them. The study conducted by Indian Institute of Public Administration, New Delhi on 'The image of police officers in India' shows the 50 percent of the respondents shows that non-registration of FIR is the usual malpractice among the police stations in India.⁶⁸ Based on the above study, we can judge the difficulty in registration of a FIR in the cases of custodial violence when in the usual cases the hurdle to register the FIR is so huge. The problem does not end with the registration of FIR because it becomes harder to prove, beyond reasonable doubt, the case

Statutory Provision Against Custodial Violence)

⁶⁶ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission), p. 2

⁶⁷ *Lalita Kumari v. Govt. of Uttar Pradesh*, (2014) 2 SCC 1, AIR 2012 SC 1515 (India)

⁶⁸ See LAW COMMISSION OF INDIA, ONE HUNDRED AND FIFTY SECOND REPORT ON CUSTODIAL CRIMES (Law Commission of India, New Delhi, 1994) (152nd Report of Law Commission), p. 35

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

against the alleged police officer. The problem arises because the violence when happens inside the four walls of lock-ups, the only persons who have evidence regarding the same are police officers themselves and bound by the brotherhood, they hardly put the evidence in front of the court.⁶⁹ Studies suggest that ‘between the years 2010 – 2015 some 591 cases of custodial deaths were reported in India. What is more alarming is that in 2015 alone, judicial inquiry was conducted only in 31 of the 97 custodial violence cases. It is interesting to note that out of the 28 police a personnel charge-sheeted, not one was convicted; this clearly points to a nexus of sorts between the law enforcement agency and the accused.’⁷⁰

The problem of failure to make police officers accountable for custodial violence seems to have no end. However, there are several recommendations given by law commission reports and various judgments. The first one is the amendment in the IEA to reverse the burden of proof in the cases of custodial violence. *113th Report of Law Commission*⁷¹ recommended the insertion of section 114B which suggest that ‘in a prosecution of a police officer for an offence constituted by an act alleged to have caused death or bodily injury to a person, if there is evidence that the death or injury was caused during a period when that person was in the custody of the Police, the court may presume that the death or injury was caused by the Police Officer having custody of that person during that period.’ Second, the apex court and *152nd Report of Law Commission* raised the need for the independent agencies to investigate matters related to custodial violence. In *Bhagwan Singh v. State of Punjab*,⁷² the case was transferred to CBI to investigate the matter because of the lack of credibility on police investigation. These recommendations are not yet followed entirely and therefore, resulting in increasing custodial violence cases in India.

Conclusion

The increase in the cases of custodial violence has not only raised the eyebrows of critics of the Indian judiciary but also became one of the main reasons of growing dissatisfaction in the hearts of the general public against the police officers. The police officers should realize and

⁶⁹ *Munshi Singh Gautam v. State of MP*, (2005) 9 SCC 631 (India)

⁷⁰ <https://blogs.lse.ac.uk/humanrights/2017/05/19/revisiting-indias-obligations-against-custodial-torture/>

(Revisiting India’s Obligation against Custodial Torture; Aditya Manubarwala)

⁷¹ See LAW COMMISSION OF INDIA, ONE HUNDRED AND THIRTEENTH REPORT ON INJURIES IN POLICE CUSTODY (Law Commission of India, New Delhi, 1985) (113th Report of Law Commission)

⁷² *Bhagwan Singh v. State of Punjab*, AIR 1992 SC 1689 (India)

believe that their duty is to protect and comply with the laws instead of taking it in their own hands. Using violence to extract the confession from the accused exists in several countries other than India. In a study to observe ‘why people confess’, it was found out that at two English police-stations where 170 suspects were interrogated, the rate of confession came out to 58 percent.⁷³ Inflicting pressure by the police on the accused, subsequently results in them confessing the crime which they initially denied. This shows that not only in India but worldwide, confession is one of the main motives to use violence on the individuals.

Custodial violence is not a new phenomenon in the criminal justice system since it has its roots even before independence. However, the question still remains the same, why is custodial violence not decreasing? However, this can only be curbed if the conditions of police under which they are forced to discharge their duties are improved and reformed. There should be an increase in the workforce in the police stations, there shouldn't be any pressure from the senior officers or media or any kind of political interference which results in them resorting to torture and violence on the accused to record their confession and conclude the investigation as soon as possible. The words of the Police constable in Julfar Shaikh case also highlights the normality of violence in custody; ‘This is what I have to say about the wounds on the body of the said accused. Since he was a hard core criminal, he refused to give any information. It was essential to get that information from him, that's why [the police] used the “truth seeking” belt and beat him up in front of me. He was so weak after the beating that when he got up to drink water, he was dizzy with pain and collapsed against the window, breaking his lower jaw.’⁷⁴

Hence, it is evident that there is an urgent need to bring reforms to curtail the issues related to custodial violence and safeguard the rights of an accused, some of which are also mentioned in the various law commission reports discussed above.

⁷³ <https://www.jstor.org/stable/40062301> [Psychological Science in the Public Interest, Vol. 5, No. 2 (November 2004), pp. 33-67]

⁷⁴ <https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody> (Human Rights Watch Report: “Bound by Brotherhood”– India’s Failure to End Killings in Police Custody, December 19, 2016)