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Review Article

Custodial Violence in Untouchable Castes: A Theoretical Background with Special Reference to Western Odisha

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Abstract

Custodial violence against scheduled castes and scheduled tribes is a serious concern in Indian society since it runs counter to the notion of social fairness. This scenario persists despite national laws, several human rights accords, and judicial standards as well as international law. Given the seriousness of the situation, it is vital to examine the threat from several perspectives in order to find a workable solution. The notion of Custodial Violence in India is examined in this research from a social and legal standpoint, with particular emphasis on SCs and STs. It makes the case that communities with less strength are more prone to become victims of such crimes. The exhaustive criminal law of the country provides for an array of provisions to safeguard the individuals, in the substantive law and by providing for procedure that prevent the police officials from arbitrary exercise of their power. With respect to the violence against SCs/STs, special legislations and provisions were enacted many years ago. On an international level, custodial violence has been seen as a matter of basic human right violation. Another important area through the issue has to be analysed is the role of judiciary in curbing the issue. The Apex Court in its judgments declared that any form of torture or cruelty, would be offensive to the dignity and constitute an inroad into the right to life of an individual through a plethora of judgments

Keywords: Custodial violence, untouchable, Jail, Dalit, SC/ST, atrocities

INTRODUCTION

Custodial Violence refers to the violence in police custody and the worst form of Human Rights violation. Custodial crimes and torture in the police custody is seen as heinous and revolting as it reflects betrayal of custodial trust by the public authority who has been assigned with the duty to preserve the Human Rights of the defenseless citizens, have turned out to be the violators of the same, disregarding the rule of law. The recent incidents throw light to the alarming rate of its hike, which occurs mainly to the SCs and STs, owing to their powerlessness and financial backwardness. In 2019, the number of custodial deaths was an average of about 5 persons per day.[1] In 2020, the Supreme Court asked the Government's response pertaining to the implementation of Section 176(1A) of the CrPC, which calls for mandatory judicial inquiry related to incidents of deaths, disappearance, rape, etc. in judicial custody.[2]

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Custodial violence basically means torturing or inflicting violence on an individual or group of persons while in the custody of the police or judiciary. According to the Law Commission of India, crime by a public servant against the arrested or a detained person who is in custody amounts to custodial violence.

It is also seen that it is the weaker sections of the society, especially the SC, ST who become the victims of such brutality very often. The Report of the National Commission for SC ST highlights this aspect showing us the trends in terms of atrocities against them. The law of the land provides for greatest protection to them in terms of Fundamental Rights and considered it to be vital by including in the Directive Principles of State Policy. The Evidence law provides for further add on to both, to prevent the same. Yet there is a hike in custodial torture.

The Concept of Custodial Violence

The term Custodial Violence has not been defined under any National Law or International Conventions. A general meaning of Custody implies 'a legal right or duty to take care of something or someone'.[1] Therefore, the word comes with a much greater responsibility or obligation to take care of. In legal terms, it means imprisonment, the detaining of a person by virtue of lawful Power or authority.[2]

The Criminal Law consists of two types of Custody, the Police Custody and Judicial Custody, as prescribed under CrPC.4 According to Section 167(1) of CrPC, "the magistrate to whom an accused person is forwarded under this section may whether he has or not has jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as he may think fit. Provided that the magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of 15 days if he is satisfied that adequate ground exist for doing so."

The accused can be kept in police custody under two occasions, firstly, on the arrest of a person, for a period of 24 hours, after which he should be produced before the magistrate. Secondly, after producing before the Magistrate, upon the orders, the accused can be kept for a maximum of 15 days, for further investigation. During such period of time, the accused is being provided with his specific rights which have been enshrined under the Criminal Procedure Code which is corollary to the Constitution of India, enshrined under Article 22. He is also endowed with the protection of his basic human rights especially the one under Article 21, available to him as Fundamental Right. The other type of Custody is the judicial custody, by which a person is sent to jail or prison, wherein interrogation is not permissible like that in police custody.

Death of judicial and Police custody in India

A total 2,152 cases relating to deaths of persons in judicial custody and 155 relating to deaths in police custody were recorded in 2021-22 (until February 28, 2022) by the National Human Rights Commission (NHRC), the home ministry informed the Lok Sabha on Tuesday. Replying to a question, MoS (home) Nityanand Rai revealed that UP accounted for the highest cases of deaths in judicial custody (448) in 2021-22, while Maharashtra reported the highest deaths in police custody (29) that year. NHRC announced total compensation worth Rs 4.53 crore in 2021-22 in 137 cases of custodial deaths, lower than Rs 4.88 crore of compensation money awarded in 161 cases in 2020-21. In the last five years, disciplinary action was taken in just 21 cases of custodial deaths. However, the prosecution was not directed in any of the cases.

Custodian Death in Dalit western odisha

The alleged custodial death of a 22-year-old theft accused, Abinash Munda of Bhalupali, turned the Ainthapali police station in the city into a war zone on Friday morning.[3]

The controversy around the death of a Dalit youth, allegedly due to custodial torture in western Odisha district of Bargarh has thickened, with Opposition leaders and rights activists demanding the immediate sacking of police personnel involved in the case and prosecution under stringent sections of the IPC.Gobinda Kumbhar (35) of Tora under the Bargarh town police station limit was picked up by police on September 24 night 28 Nov 2021.[4]

Sushil Kumar Nayak vs State Of Odisha on 21 August, 2017 custodial death of makhanu bag 57 bheden PS Bargarh District.[5]

Basanta Pradhan, who died last year following torture in the custody of Balangir Police.[6]

Pattanik Harijan 45 year langigard bhawanipatan jail custodial death. He died on Friday, 23 August when he was brought from Bhawanipatna Jail with high fever. We are outraged that the jail authorities.18 feb 2019

as Jai Lakra (30) of Raika Kachhar village in the sudargarh district. He was working as a bank agent and was arrested two days.

Legal Provisions for Custodial Violence in India

The following provisions were enacted to curb the tendency of policemen to resort to torture to extract confessions, etc.:

Sections 330, 331 & 348 of Indian Penal Code (IPC)

Sections 25 & 26 of the Indian Evidence Act

Section 76 of Code of Criminal Procedure (CrPC) and Section 29 of the Police Act, 1861

Other important constitutional provisions are as follows:

Protection from torture is a fundamental right enshrined under Article 21 (Right to Life) of the Indian constitution

Section 41 of the Criminal Procedure Code (CrPC) was amended in 2009 to include safeguards under 41A, 41B, 41C and 41D, so that arrests and detentions for interrogation have reasonable grounds and documented procedures, arrests are made transparent to family, friends and public, and there is protection through legal representation

Article 21 of the Indian Constitution provides that no person shall be deprived of life or personal liberty except according to the procedure established by the law

Causes of Custodial Violence in India

There are multiple reasons which have led to the increased cases of custodial and judicial violence in the country. A few of the most common causes have been discussed below:

Absence of Strict Laws: It is important that strict and mandatory laws are passed in order to stop custodial violence. In India, custodial violence is yet to be criminalised and an unfair benefit of which has been taken by those in power over the past many decades

No Solid Prison Reforms: The entire prison system is inherently opaque giving less room for transparency. Prisons in India continue to be affected by poor conditions, overcrowding, acute manpower shortages and minimal safety against harm in prisons

Work Pressure: The police work under extreme pressure and in cases of a quick solution to complex cases, they choose violence to get evidence and confessions

Social Factor: Considering the approach of "an eye for an eye", the people in power choose to use violence to get out information from the ones accused of a crime

Not following International Standards: India had signed the United Nations Convention against Torture in 1997 but its implications are yet to be mandatorily followed in the country

Limited time for interrogation, pressure from higher authorities and long working hours are few other reasons for custodial violence in the country.

SUGGESTIONS AND RECOMMENDATIONS

- **Proper education and training:** The current situation necessitates a shift in police selection, focusing on root causes, personality traits, and behavior, promoting law-abiding behavior, and dispelling the notion of police as punishment-seekers.
- **Police Reform:** The current police system needs reform to address colonial history and human rights issues. A friendlier and more cautious approach is expected, and effective surveillance mechanisms should be implemented to monitor activities and reduce abuse. Ethical policing should be included without segregating civilians based on caste, gender, or religion.
- Use of scientific methods for investigation: Custodial violence often occurs when police officers resort to torture to extract confessions. To address this issue, the Police Act should be amended to shift the status of police from torturers to protectors of citizens' rights. Scientific methods for investigation should be used to prevent violence, as overburdened officials may delegate work to untrained subordinates. Higher authorities should avoid hasty criticism and encourage the use of scientific methods like forensic laboratories and computer databases. Financial assistance for modernizing the police force and ensuring appropriate safeguards should be provided. Police officers should be motivated to approach citizens peacefully and avoid torture.
- Amendment of the Evidence Act: The 113th Law Commission recommends amending Section 114B of the Evidence Act to address custodial torture, where police officials are

the only witnesses. This amendment would provide a rebuttable presumption that injuries in police custody were caused by the officer-in-charge, allowing the police to prove their innocence. This would encourage more humane and lawful treatment of suspects.

- Adequate protective measures during arrest: The Apex Court's guidelines emphasize the importance of protective measures during arrests. Police officials should inform the accused, inform family members, record arrests in the prescribed form, and conduct proper medical examinations. They should follow the DK Basu judgment guidelines and regularly check CCTV cameras to prevent atrocities in police stations. Failure to do so could result in liability.
- Establishing a transparent prison system: India's prison system needs reform to ensure transparency and accountability. Regular visits by authorities and implementation of judicial guidelines under the Nilabhati judgment are necessary to prevent force, abuse, and violence against prisoners, particularly women.
- An exhaustive piece of legislation that deals with custodial violence: Custodial violence, often covered by police officials, can be addressed through special legislation that defines torture and establishes an independent committee to investigate allegations. High penalties can deter such acts. The Convention on Torture, recommended by the 273rd Law Commission Report, would provide an international check on torture, leading to comprehensive legislation to curb it effectively. This would release the potential of the constitutional values of life and liberty.
- Protection of the weaker sections: The NPC's third report recommends implementing a special investigation cell in the police department to monitor cases under the Protection of Civil Rights Act and atrocities against Scheduled Castes and Scheduled Tribes, and a composite cell at the district level to investigate complaints.
- Prevent Segregation on the basis of Caste: Segregation in India is a major cause of untouchability and hate crimes, as it increases the gap between upper and lower castes, leading to increased violence against these communities. Segregation is evident in the housing facilities and services provided, such as health and sanitation facilities, which are not in line with non-Dalits' experiences. To solve the problem, proper awareness of the rights of SC/ST communities, effective implementation of legislation, and strict punishment for authorities are needed. Preventive mechanisms, such as custodial rape cases, should be maintained, and victims should be adequately compensated. Teaching the human rights perspective to children in schools is crucial to prevent treating these communities as 'different' and instead include them within the 'purview of mankind.

CONCLUSION

Custodial violence is a severe human rights violation that undermines the rule of law in a country. It is often committed by police officers, who rely on torture and violence to enforce their duties. The abuse of power by the police often targets marginalized and poor sections of society, such as the SC/ST community. Despite existing legislation focusing on violence against them, guidelines often abandon these communities due to their powerlessness. Historical segregation and caste system segregation create a gap and lead to violence against these communities. To address this issue, a special investigation cell in police departments should be established, and a greater amendment should be made regarding caste. This, along with police training and stricter law enforcement, could help reintegrate society and address custodial violence.

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