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The Culture of Sexual Victimization and Custodial Violence inside the Indian Prisons: A Critique

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ABSTRACT

Prisons in the modern times are places where criminals are sent with a view to reform them, make them repent for their wrongs and allow for their reintegration into the society. One of the major roadblocks to their reintegration is the custodial violence and sexual victimisation of the prisoners. It happens inside prisons, during police custody as well as in judicial custody. It impacts the mental and physical well-being of prisoners and the accused to a great extent and leaves scars deeper than the imprisonment itself. Moreover, even the family members of the accused are not safe and can be subject to abuse at the hands of law enforcement agencies. The torture can lead to deaths or affect the mental health of the prisoners to the extent that they are driven to commit suicide. The Indian Constitution as well as International Human Rights Instruments provide for the humane treatment of prisoners. The abuse perpetrated is a violation of the human rights of the prisoners and their Fundamental Rights as well. It is a problem that has continued despite the repeated focus on the issue and the judicial intervention that followed. This paper will analyse the impact of custodial torture and sexual victimisation of the victims in the Indian Prison System. It will analyse the impact of the practices on prisoners, the legislations in India to prevent such practices and the decisions by the Indian Courts. The International Principles on the same will also be discussed in order to provide suggestions to improve the condition of the prisoners and ensure that their basic human rights are cherished and preserved.

Keywords: Custodial Violence, Sexual Victimization, Human Rights, Torture, International Human Rights Instruments.

I. INTRODUCTION

“No one truly knows a nation until one has been inside its jails. A nation should be not be judged by how it treats its highest citizens but its lowest ones.”

¹ Author is a Research Scholar at Faculty of Law, Aligarh Muslim University, Aligarh, India.

- **Nelson Mandela**

Prisons are places of reform in the modern times. They allow the convicts a chance to rehabilitate, reflect on their misdeeds and reintegrate into the society after serving their sentence. They are also used to hold undertrials in certain instances. The utilitarianism of Jeremy Bentham had a great influence on the modern prison system. His thinking came at a point where capital punishment for a variety of relatively trivial offences was on the decline. Therefore, the notion of incarceration as a form of punishment and correction held great appeal to reform-minded thinkers and politicians. It was a shift from the initial role of prisons. Prisons first came into existence as a means to punish the wrongdoers in the society. There was no limit to the punishment that could be inflicted upon a prisoner. Lashing, stoning, beating and other forms of physical hurt were the common practices. The motive was to destroy their souls and resolve.² They are used to deprive a person's involvement in society. The right to vote, participate in social events, interact with public, indulge in pleasurable acts etc. are denied to the prisoners.³

However, despite the ideal underpinnings of the modern prison system, there remain some glaring atrocities committed in the prison system which deprives the prisoners of their basic human rights. Custodial Violence and Sexual Victimization are the two most prevalent atrocities committed against prisoners in the modern times. They are rampant in prisons around the globe, despite being outlawed in most nations. The humane treatment of prisoners also forms a part of the International Human Rights Law as well as the International Humanitarian Laws.

II. CUSTODIAL VIOLENCE: A GENERAL UNDERSTANDING

Adrianna P. Bartow stated: *"Torture is the wound in the soul so painful that sometimes you can almost touch it, but it is also intangible that there is no way to heal it. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself."*

Custodial Torture occurs all across the world. It is often inflicted on prisoners irrespective of their age, sex or state of health. It is one of the most serious forms of violation of human rights. There is a general tendency to resort to third degree methods of torture when extracting a confession from hardened criminals, terrorists and dacoits. It is used by both the police and the bureaucracy in the modern times. There is no specific definition of Custodial Violence in India.

² M. FOUCAULT, DISCIPLINE AND PUNISH (New York: Vintage Books 1995).

³ Parul Luvleen, *Victimization of Women in Prisons: A comparative analysis of India and Indonesia*, 7, BRAWIJAYA LAW JOURNAL OF LEGAL STUDIES, 3 (2018).

The Prevention of Torture Bill, 2010 has not been passed till date. India has signed the 'Convention Against Torture'. However, there has been no ratification of the Convention by India.

When an accused is taken into custody, the intention is to prevent them from interfering with the investigation of their crime and leave them to the care of law enforcement agencies until the case can be decided. The term custody usually refers to protective care. When the offender is handed over to the agencies to take his custody by the judiciary, it implies that the agency must ensure that no harm is caused to the person and no influence can be made over the investigation. However, the time during police custody often results in violence against the person which can be of varying degrees. It involves a number of methods of torture which can include relentless beating and inflicting of physical injuries. This can lead to grave injuries to the prisoners and even deaths in extreme cases.

Women prisoners and accused are often the worst affected in such cases. There are instances where they are at the police station to report abuse or a crime that is committed against them and suffer sexual abuse and assault from the police officials itself. They are particularly vulnerable in prisons where they already lack proper sanitary and nutrition facilities due to overcrowding. In addition to this, they are vulnerable to exploitation by other prisoners, prison staff and the police officials as well. This reflects the sorry state of affairs related to women in the prison system.

III. GROWTH OF CUSTODIAL VIOLENCE AND SEXUAL VICTIMISATION DURING COVID-19 CRISIS

The gravity and the impact of the violence was highlighted during the times of Covid-19. On June 19, 2020, a father-son duo of shopkeepers, named Jeyaraj and Beniks were taken for an enquiry by the police for keeping the shop open beyond the permitted hours. They were taken under police custody and suffered sexual assault and physical violence which led to their deaths.⁴ Thus, this incident highlighted the gravity and prevalence of custodial torture in the Indian Prison System and its impact. Unfortunately, this was one of the several cases of brutal violence and assault that have been inflicted upon prisoners, undertrials and even suspects. It can even lead to the death of the prisoners.

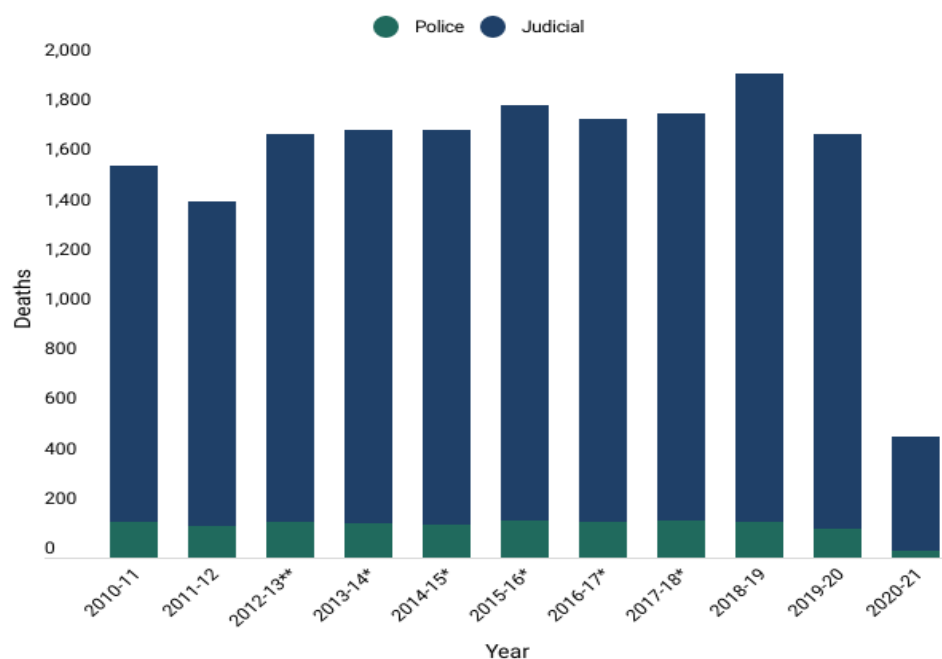
The National Human Rights Commission of India, registered a total of 90 deaths in police

⁴ Arun Janardhan, Explained: How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son, THE INDIAN EXPRESS (Sept. 24, 2020) <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/>

custody from January to December 2020. Uttar Pradesh is the state where there are the maximum prevalence of fatalities due to Custodial Torture.⁵ A very recent case emerged where Altaf was found hanging by a 2-feet high pipe as per the police version of events. The circumstances under which he died were troubling and further indicated the possibility of a death due to custodial torture. The Supreme Court has also stated that custodial death is “*one of the worst crimes in a civilised society governed by the rule of law.*”⁶ This observation was made during the year 1997 and 24 years down the line custodial torture is still a major issue with the Indian prison system.

In a very recent incident, a thirty-five-year-old man from the Davangere district was taken by the police for investigation in a case related to cheating. It was supposed to be a routine investigation and questioning. However, the questioning resulted in the death of the accused. It was only after protests by the locals that a case of custodial death was registered against the police officials involved in the death.⁷ This highlights the prevalence of custodial torture even during the times of the Covid-19 Pandemic.

Deaths in Custody Over the Years



Source – Monthly reports of the NHRC (April 2018 – July 2020) and annual reports of

⁵ National Campaign Against Torture, India: Annual Report on Torture 2020, <http://www.uncat.org/wp-content/uploads/2021/03/IndiaTortureReport2020.pdf>.

⁶ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

⁷ The New Indian Express, *Police book custodial death case after protest in Karnataka's Davangere district*, EXPRESS NEWS SERVICE, (Dec. 6, 2021), <https://www.newindianexpress.com/states/karnataka/2021/dec/06/police-book-custodial-death-case-after-protest-in-karnatakas-davangere-district-2392200.html>.

the NHRC from the year 2010-2018.

The graph shows the data collected by NHRC over custodial deaths. It shows that during the last decade, there have been an average of 139 custodial deaths per year. The violence continued even during the time of the Covid-19 Pandemic and highlights the grim reality of the Indian Prison System.

IV. WOMEN AND PRISON HORROR

Historically, the prisons have been made in order to accommodate men. However, in the recent times, there has been an increase in women prisoners as well. In India, the number of women prisoners that have been arrested till 2016 were 3,34,865.⁸ Women constitute around 4.3% of the prison population of India. However, even as of 2021 there are only 31 jails exclusively for women prisoners which results in overcrowding, poor sanitary and hygiene facilities.⁹ A large number of women are housed in separate enclosures inside men's prison itself. The needs of women in prison vary drastically from those of men. However, with no special facilities available to a large number of them, it can be said that they do not experience equal treatment inside the prisons.¹⁰

In addition to this, they remain vulnerable to sexual abuse, torture and violence by the officials, fellow prisoners and the prison staff. They live in a state of constant fear where they are already stripped off their dignity, made to live in shoddy facilities and denied basic human rights. They bear a punishment far worse than their actual sentence in the form of life inside prisons.

V. SEXUAL VIOLENCE AND VICTIMIZATION AGAINST THE WOMEN PRISONERS

The rape of women prisoners by the staff in the prison is one of the worst forms of custodial violence. Asian Centre for Human Rights (ACHR) stated that "*custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and a number of custodial rapes of women take place at regular intervals*". There have been several complaints by women kept inside prison of the cruel treatment they are often subjected to in prisons. The incidents include sexual abuse, physical torture, beating and rough handling. There is often a disregard of the procedures that need to be followed during arrest, search and custody of the women by the police which inflicts further wounds on their physical and mental state.

⁸ Crime in India 2016, NCRB, (Ministry of Women and Child Development, 2018).

⁹ Ministry of Women and Child Development, Women in Prisons, 2018, New Delhi.

¹⁰ Stephanie S. Covington and Barbara E. Bloom, *Gendered Justice: Women In The Criminal Justice System* (2003) CAROLINA ACADEMIC PRESS <https://www.stephaniecovington.com/assets/files/4.pdf>.

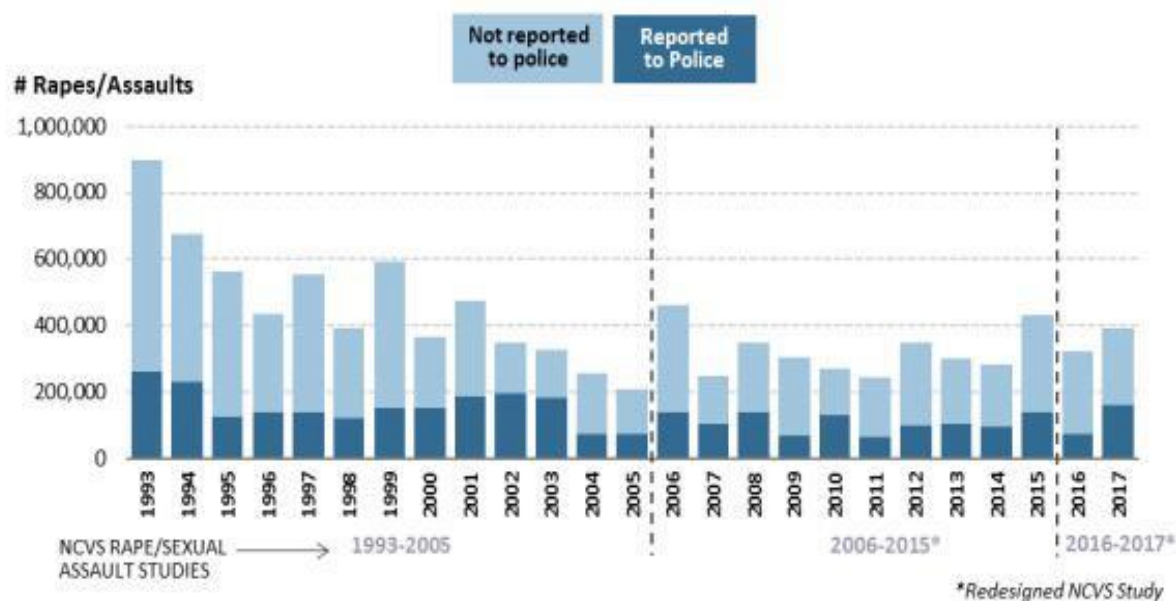
In addition to these issues, the most pressing issue is the sexual violence and sexual victimisation experienced by women in prison. Sexual Violence has been defined by the World Health Organisation as, “*any sexual act or attempt to obtain any sexual act or unnecessary sexual comments or advances or acts to traffic or against the person’s sexuality using any kind of coercion done by any person regardless of their relationship with the victim at any place not limiting to home and work.*”¹¹ There are a number of incidents in prisons related to violence and rape. The powerful prisoners often prey on the weaker in order to fulfil their sexual desires. It is also a means to assert power and dominance. In the absence of adequate protection, the weaker ones have no choice but to comply with the demands in order to ensure their own safety. An inmate who is a victim of rape inside prison often suffers the same experience multiple times since they are marked as easy prey. The phenomenon of sexual abuse is prevalent in both male and female prisons. The perpetrator may be of the same or the opposite gender. There are several instances where the prison staff is a perpetrator of the sexual abuse or is complicit in the act.¹² This furthers the misery of inmates, especially the ones perceived as weak, since they have no safe space and are subjected to abuse which leads to trauma, physical injury and violation of personal boundaries.

In the time of Covid-19, women comprised a very small section of the prison population. They formed only 4.1 percent of the prison inmates. They remained at high risk during the Covid-19 Pandemic and suffered more in the prisons during the Pandemic. The Delhi High Court also noted that the increase in Custodial Violence is alarming¹³. The increased advent of custodial violence means, there is also an increase in the sexual victimisation of women. Therefore, there is an urgent need to address the issue.

¹¹ WHO, Global Campaign on Prevention of Violence, WHO, https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

¹² Just Detention International, Sexual Abuse in Prison: A Global Human Rights Crisis, https://justdetention.org/wp-content/uploads/2015/11/International_Summary_English.pdf.

¹³ The New Indian Express, *Increase in custodial violence cases depressing: Delhi Court*, THE NEW INDIAN EXPRESS (Nov. 10, 2021) <https://www.newindianexpress.com/cities/delhi/2021/nov/27/increase-in-custodial-violence-cases-depressing-delhi-court-2388721.html>.



Source: NCVS

The graph above shows the lack of reporting of rapes and sexual assault against women over the years. There are multiple reasons for the lower reporting of such incidences. These include distrust of the system, societal norms, fear of further harm by the perpetrator, victim blaming and shaming and more. When such acts are committed inside prisons, it becomes nearly impossible for the prisoners to report the assault or rape since they are already convicted or under the scanner for an offence. Therefore, they are of the belief that their version of events will not be believed which often leads them to suffer in silence.

VI. IMPACT OF CUSTODIAL VIOLENCE AND SEXUAL VICTIMISATION ON PRISONERS

There are significant physical and emotional consequences borne by victims who have faced custodial violence and sexual assault in prison. Some of the common symptoms felt by all prisoners are fear, shame, anger, anxiety attacks, nightmares and flashbacks. These symptoms are felt even by those outside prison. However, they are further aggravated for the ones imprisoned since they do not have any privacy. They lack control on their life and the abuser constantly stays with them.

In addition to these consequences, there are also health issues that can be suffered by the victims. There is a risk of the transmission of Sexually Transmitted Diseases like HIV/AIDS, Syphilis, etc. Moreover, the victims can also suffer physical injuries like abrasions, cuts, broken bones etc. which often go untreated and lead to further decline in health. There is risk of unsafe pregnancies for female prisoners where they might be forced for carrying out abortions or to carry the child of their abuser. There is minimal access to psychological counselling which

further aggravates the impact of the offence. This can result in the development of chronic health issues, substance abuse and mental health problems. The aim of a prison is to reform the inmates so that they can be reintegrated into society. However, such experiences adversely affect this process and creates further possibilities that they will seek revenge on the perpetrators and revert to criminal behaviour.¹⁴ They are prone to become social deviants and engage in activities that would lead them to return to prison.

VII. CASE STUDIES HIGHLIGHTING THE MENACE OF CUSTODIAL VIOLENCE

The custodial violence and sexual victimisation have been prevalent in the Indian Prison system for a long time. Some case studies have been discussed below that highlight the sad truth about the incidents in Indian prisons which take place irrespective of class, caste, sex or gender.

Tihar Jail is famous as the largest jail in India. Times of India carried out a study where it interacted with the inmates of the jail. It found that sexual abuse was one of the major issues prevalent in the jail. The primary targets of the inmates who are sexual predators are young men in their 20s. The interaction revealed that a new prisoner is vulnerable to be sodomised by an entire gang. A murder accused who had been in jail for three years had stated that, “*Often when he is being assaulted, the aggressor’s friends watch for pleasure, thereby multiplying victim’s humiliation. We stayed in groups when we stepped out of cells at night to avoid getting caught by rival gangs or aggressive inmates.*”¹⁵

This is one of the major fears of new prisoners as they are forced to survive in this system. There are several instances where an inmate turns into a prison prostitute in order to stay protected and obtain other benefits like cash and cigarettes. It also mentioned reports from the USA and UK which quoted high instances of sexual abuse in their prisons and further stated that it is often underreported.

In addition to sexual abuse, there are other methods using which the prisoners are tortured. It revealed jail specific customs like *Colgate* where a new prisoner is masturbated upon after his arrival and *Band Baaja* where an inmate is beaten up with steel plates and utensils while being watched by other victims. The impact of the practices is such that even the most dreaded criminals get anxious about their entry into the jail. The story of the accused in the *Nirbhaya Rape case*, Ram Singh was mentioned. He claimed to being tortured repeatedly and eventually

¹⁴ *Supra* Note 12.

¹⁵ Times of India, *Rampant sexual abuse is a real nightmare in Tihar*, TIMES OF INDIA, (June 11, 2015) <https://timesofindia.indiatimes.com/city/delhi/rampant-sexual-abuse-is-a-real-nightmare-in-tihar/articleshow/47621742.cms>.

committed suicide in jail.¹⁶

The study also revealed a hierarchy amongst prisoners. A criminal who is accused of rape often receives the worst possible treatment. On the contrary, sympathy is provided to those who killed their lover and family members as per a source mentioned in the study. The situation did not change often even after judicial intervention by the courts and the deaths due to torture in prison continued. The authorities on the other hand insisted that they had proper grievance redressal mechanisms in place.

This case study shows that even in the largest jail of the country which is often seen as a place where criminals are allowed to reform, they are themselves not safe from abuse and torture. The silence of the authorities over the incidents makes it seem like they are complicit in the acts or are the ones who enable it for the prisoners with power. It also shows how a prison can turn into a living hell for an inmate and inflict far more punishment than what is permissible under the law.

The sexual victimization and custodial torture is women centric too. Recently, a female prisoner was bailed out by the jailers for a week. The woman was kept by the jailers who daily raped her and assaulted her. A woman in Elisaar jail had tears and bleeding in her private parts and was driven to insanity after being held in police custody for over three weeks and being violently raped by the police officials despite being in only for a week of “simple detention.”¹⁷ These incidents show how women are vulnerable to rape and sexual assault even during detention periods. The *Mathura rape case* shows how a woman can go to the police officials to seek safety and end up getting her dignity violated through the abuse at the hands of the officials.

In yet another saddening case, Anjum Zamarud Habib, an activist from Kashmir, who was jailed and booked under POTA in 2003 revealed how she had been verbally stripped by the police and faced an extremely hostile attitude. She had difficulty in obtaining a pen and paper and revealed the prevalence of customs inside jails that need to be followed or else they would be brutally abused. She revealed how the Kashmiri Women are abused as they are a minority. She stated that, “*Young Kashmiris including women are locked up in multiple prisons across the country. They are attacked, their voices silenced, as they are reduced to their immediate*

¹⁶ *Ibid.*

¹⁷ Sneha Singha, *What happens behind the bars?* NORTH EASTERN CHRONICLE <https://northeasternchronicle.in/news/what-happens-behind-the-bars-rape-and-sexual-harassment-in-prisons-of-india/>,

identity of being Kashmiri and Muslim.”¹⁸

As a young 14-year-old girl, Sori had been charged with acting as a Maoist conduit. She revealed that in order to extract a confession, electric shocks were given to her by the police. She recounted her experience and said that, *“Most inmates were ill and received little medical care. The food in the jail was infested with worms and insects. We resolved to go on hunger strike and threatened to produce the food in court. Only then were many of us made to oversee the kitchen.”* She further highlighted how the Adivasi Prisoners are often the most vulnerable. In addition to this she stated that, *“Women live in crammed prisons, with a shortage of food, clothes and even sanitary napkins. Women face sexual violence and harassment at the hands of the policemen in forests. Young girls aged 14 are impregnated as a consequence and spend their time in jail in denial and depression.”* She further revealed that, *“They tried very hard to shut me up so that the world does not know as to what happens behind those closed doors. I was physically and sexually tortured. When they failed to shut me up with this, they even tried to pit my own husband against me. My daughter was thrown out of her school only because of my struggle.”¹⁹*

These studies highlight the treatment faced by women prisoners on a regular basis and show the deplorable conditions of Indian Prisons when it comes to the treatment of the women prisoners. The studies further highlight the intersectional nature of the violence faced by the women where women from religious and cultural minorities are abused more often.

VIII. LEGAL PROTECTIONS AGAINST CUSTODIAL VIOLENCE AND SEXUAL VICTIMIZATION

(A) Constitutional Provisions

The Indian Constitution was based on the principle of social justice and sought to provide justice, liberty and equality to all citizens including the prisoners. It seeks to ensure that prisoners are given humane treatment. Therefore, some rights have also been extended to prison inmates, through the Articles enshrined in the Constitution of India.

Article 20(3) provides for protection against self-incrimination. A person cannot be coerced into confessing to their crime and the privileges under this Article can only be waived off voluntarily. **Article 21** upholds the right to life and liberty. It states that, *“No person shall be deprived of his life or personal liberty except according to a procedure established by law.”*

¹⁸ Teesta Setalvald, *Women prisoners recount Jail Horror Stories*, CJP (Jan. 24, 2019) <https://cjp.org.in/women-prisoners-recount-jail-horror-stories/>.

¹⁹ *Ibid.*

In case a person is harassed and tortured, it is a violation of the Fundamental Right under Article 21. **Article 22** provides for that an arrested person has the right to be presented before a magistrate within a period of 24 hours from the time of arrest.

In its decision of *Maneka Gandhi v. Union of India*,²⁰ the scope of Article 21 was expanded by the Supreme Court. It held that, “*the right is not confined merely to physical existence but also includes the inherent right to live with dignity.*” In the case of *Inderjeet v. State of Uttar Pradesh*,²¹ the Supreme Court held that, “*punishment which has an element of torture is unconstitutional.*”

(B) Provisions under the Code of Criminal Procedure, 1973

Section 49 provides that, “*The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.*” **Section 57** provides that a person who has been arrested should not be detained in police custody for over 24 hours unless a special order has been issued by the Magistrate.

(C) National Human Rights Act, 1993

This Act was passed to prevent the abuses of human rights in India. Under this Act, a complaint can be filed before the National Human Rights Commission (NHRC) which will take note of the custodial torture suffered by the prisoner and take appropriate actions. The NHRC also compiles a data of the deaths related to custodial torture every year and provides recommendations to prevent the same.

Section 12 of the Act defines the functions of the commission. It specifically provides that the Commission can, “*visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government.*” The NHRC has the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 for the purpose of inquiries under **Section 13** of the Act.

(D) Indian Penal Code, 1860

Section 166 of the code provides that, “*Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury*

²⁰ Maneka Gandhi v. Union of India, 1978 AIR 597.

²¹ Inderjeet v. State of Uttar Pradesh, 2016 (2) ACR 2208.

to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both” **Section 330** prohibits voluntary causing of hurt for the purpose of extorting a confession. The **Sections 340 to 348 of the IPC** deal with wrongful restraint, wrongful confinement and their aggravations.

Section 376(2)(a) of the IPC specifically provides punishment for rape committed by a police officer within a police station or on a woman in his custody or that of an officer subordinate to him. **Section 376(2)(b)** of the IPC provides the punishment for a public servant who takes advantage of his position and commits rape on a woman in his custody. **Section 376(2)(c)** applies to the staff and management of a jail remand home or any other place where a woman is kept in custody and the male official takes advantage of his position to commit rape.

(E) Evidence Act, 1872

Section 24 of the Act provides that, *“A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.”*

Section 25 provides that, *“No confession made to a police-officer, shall be proved as against a person accused of any offence.”*

Section 26 further provides that, *“No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”*

There is adequate legislation in India when it comes to the protection against Custodial torture and sexual victimisation. However, the implementation mechanism of the laws is not up to the mark. Since the persons involved are criminals or accused, their credibility is often questioned and their version of events is not believed. Moreover, if the perpetrator is a state official, there is a higher likelihood that the state will go to the maximum extent to protect them which results in repeated violations despite the presence of sufficient legislation for the same.

IX. LANDMARK JUDGMENTS ON CUSTODIAL VIOLENCE AND SEXUAL VICTIMIZATION

Sexual Victimisation and Custodial Violence have been prevalent in the Indian Prison System

for a long time. The Judiciary has realised the importance of the prevention of such practices in order to protect the Constitutional Rights as well as the Human Rights of the prisoners and undertrials. It has come a long way from the erroneous judgment in the *Mathura Rape Case*. The courts have applied the principles of the Constitution in order to provide justice to the victims of these practices. In addition to this, they have also provided monetary compensation for the damage suffered by the victim. In order to further the impact of the compensation, the courts have also made the amount payable from the salaries of the officials at fault instead of burdening the taxpayer with the compensation money.

(A) Mathura Rape Case²² - The judicial blunder

In this case, a complaint was filed in the police station by the brother of Mathura, who accused Ashok of kidnapping his sister. Mathura was asked to stay back by the police officials after the complaint had been filed. She was then raped by two police officials while in their custody. They reluctantly agreed to file a case for rape. The policemen were acquitted by the District Court since it held that the consent given was voluntary. This decision was reversed by the Bombay High Court who found the policemen guilty and sentenced them to imprisonment of one and five years. This was based on the rationale that consent obtained under threat and fear is not valid consent. However, the decision was again reversed by the Supreme Court who stated that since no alarm had been raised by the victim, there were no visible injury marks and since the victim was habituated to sex, it was not rape. A judge even went on to note that, *“Because she was used to sex, she might have incited the cops (they were drunk on duty) to have intercourse with her.”*

This decision was criticised widely as it imposed a heavy burden of proof upon the victim who had already suffered physical and mental trauma after the incident. It led to an amendment to the Section 376 of the IPC which provided for the definition and punishment for rape via the Criminal Law (Second Amendment) Act, 1983. This case was a proof of how the custodial violence and sexual victimisation can happen even to a complainant and even the policemen who have the duty to ensure safety of the general public can be the perpetrators of the heinous offence of rape.

(B) Padmini v. State of Tamil Nadu²³

Nandgopal was a suspect in a theft case. He was taken to the police station for interrogation where he was beaten to death in police custody. Padmini went to the police station in order to

²² Tukaram v. State of Maharashtra, 1979 AIR 185.

²³ Padmini v. State of Tamil Nadu, 1993 CriLJ 2964.

meet her husband. On arriving at the station, she was gang-raped by the police officials. She filed a complaint against the same and accused eleven policemen of rape. Seven of the policemen were acquitted in the case and only four were convicted. The convicts lost their appeal in the Supreme Court and the imprisonment sentence for a period of 10 years by the Madras High Court was upheld. A compensation worth Rs 1 Lakh and government employment and accommodation was also provided to the victim by the government.

This case again brought the grim reality of the Indian justice system into light where the accused or their relatives are not safe even in the custody of the police. The impact of rape was also acknowledged by the Supreme Court in the case of *State of Punjab v. Gurmit Singh*²⁴ where it observed, *“We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably caused serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.”* The impact of rape and assault is immense even on the well-being of a well to do person. When it is carried out in prison, it furthers the feeling of shame and helplessness where the victim feels that they will not be heard and cannot get any justice for the atrocity committed against them. Even if they are convicts for an offence, their punishment does not entail abuse of their person. Such a treatment is the violation of their Fundamental Right to life and liberty under Article 21 of the Constitution.

(C) Sheela Barse v. State of Maharashtra²⁵

This was a major case with respect to custodial violence faced by women prisoners in India. The plaintiff in this case was a journalist who interacted with women prisoners in lock-ups and learnt about their experiences during their time in prison. The Supreme Court treated the complaint as a writ petition and acknowledged the impact of custodial violence on women in prison. It issued specific guidelines in order to ensure that women do not suffer unfairly in prison. Some of the guidelines provided by the court were:

- *“Four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded. by female constables. Female suspects should not be kept in police lock up in which male suspects are detained.*
- *Interrogation of females should be carried out only in the presence of female police officers/constables.*

²⁴ State of Punjab v. Gurmit Singh, 1996 AIR 1393.

²⁵ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.

- *A person arrested must be immediately informed of the grounds of his arrest. It must immediately be made known to the arrested person that he is entitled to apply for bail.*
- *Whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee which should take immediate steps to provide legal assistance to him at State cost provided he is willing to accept such A legal assistance.”*

These guidelines provide for a comprehensive mechanism that can be developed by prisons in order to not deny basic human rights to prisoners. The court paid special attention to the rights of the female prisoners and realised that they are more susceptible to custodial violence and sexual abuse. Therefore, it provided special guidelines in order to protect them.

In addition to this, the courts have also offered compensation to the victims of Custodial torture. In *State of Punjab v Vinod Kumar*²⁶, the learned Punjab & Haryana High Court held that the state will pay Rs 2 Lakh each as interim compensation to the wife and children of the persons who disappeared due to police atrocities. In addition to this, they could also claim further compensation from the state or any other person ultimately found responsible for the same.

In the case of *Dr.Mehmood Nayyar Azam v. State Of Chattisgarh And Ors*,²⁷ a doctor was held in police custody and tortured. The Hon'ble Supreme Court awarded a compensation of Rs 2 Lakh to be paid by the state to the victim. In addition to that, the Court further awarded a compensation of Rs 5 Lakh to be paid to the victim from the salary of the erring police officials in equal proportions. In the case of *S.Vijayashankar v. The State Of Tamil Nadu*²⁸, the Madras High Court awarded a compensation of Rs 30.09 Lakh to the family of the victim who was tortured by the police and suffered from a custodial death.

These cases reflect a greater understanding that has been developed of custodial violence and sexual victimisation. The victim effectively suffers double jeopardy as they are already a convict or accused and in addition to this suffer from physical abuse. The courts recognised that it is not enough to merely punish the perpetrators. The victims have suffered as a result of their actions and must be duly compensated. The decision where the compensation was deducted from the salary of the officials is appreciable since it will act as a further deterrent to the officials and prevent them from engaging in such behaviour.

²⁶ State of Punjab v. Vinod Kumar, JT 2000 (7) SC 510.

²⁷ Dr.Mehmood Nayyar Azam v. State Of Chattisgarh And Ors (2012) 8 SCC 1.

²⁸ S. Vijayashankar v. State of Tamil Nadu and Others, (2019) 7 MLJ 652 LQ/MadHC/2019/2178.

X. ACCOUNTABILITY OF THE POLICE

There have been reports of 1,888 custodial deaths across the country over the past 20 years. However, there have only been 26 convictions of policemen during this time as per the official records of the National Crime Records Bureau's annual Crime in India (CII) reports from 2001-2020.²⁹ In the year 2020, the number of custodial deaths reported across India were 76. The highest number of deaths were reported in Gujarat, which accounted for nearly 20% of the deaths. There have been no reported convictions of policemen for custodial violence in the year 2020.

The NCRB has categorised "*deaths in police custody/lockup*" under two categories: persons not on remand and persons in remand. The data shows that since 2001, total 1,185 custodial deaths have been reported in the "*persons not on remand*" category and 703 in the "*persons in remand*" category. Out of the 893 cases registered against police personnel in connection with custodial deaths during the last two decades, 518 pertain to those not on remand. This is particularly disturbing since the persons subject to torture are not even convicted for their offence but suffer the atrocities by the police officials.

The role of the police is to act as the protectors of the citizens and prevent the commission of crime. However, it leads to dystopia when the protectors themselves turn into criminals and indulge in activities that are against the interests of public welfare. The Courts and the legislature have also recognized this aspect and have been constantly working towards development of a system that can hold the police officials accountable. The courts have resorted to awarding of compensation from the salaries of the police officials with the view of dissuading them from indulging in such practices. The graph below shows the deaths occurring in police custody in India over the recent years.

Deaths in Police Custody in India

²⁹ Harikishan Sharma, 1,888 custodial deaths in 20 years, only 26 policemen convicted, (*Indian Express*, 16 November 2021), <https://indianexpress.com/article/india/custodial-deaths-policemen-convicted-7624657/>



Source: NCRB

The data by NCRB shows that out of the 783 Custodial Deaths that took place between the years of 2010 and 2018, charges had been filed in only about one-third of the cases. There had been no convictions for the same. This shows that the policemen have been enjoying a free reign when it comes to custodial violence without any accountability.

XI. CONCLUSION

Custodial Violence and Sexual Victimization are major issues that have plagued not only the Indian prison system, but prison systems across the world. It is a failure of the justice system where a convict, accused or even an under-trial has to suffer through it despite already getting the lawful punishment for their crime. It has an adverse effect on the mental and physical well-being of prisoners. The role of the prison system as one to reform the convicts and allow them a chance for reintegration into the society is unfulfilled when such occurrences take place. India has a large prison population and there are several factors which allow room for violence and victimisation. These include overcrowding, lack of facilities, lack of legal awareness, improper training of officials and more. Moreover, the power balance is skewed in favour of the officials and the powerful prisoners who make the system work for them and assert their authority by carrying out acts of abuse. The case studies make the picture clear that despite repeated judgments by the Indian Courts, the practice still continues on a ground level. It needs to be realised that under International Human Rights Law and Indian Constitutional Law, prisoners are recognised as humans and are entitled to basic human rights.

The Article 21 of the Constitution of India has been given a wide interpretation to protect the life and liberty of each citizen in multiple aspects by the Indian Courts. Moreover, the courts have been strict on cases related to custodial torture and abuse in recent times and have more

often than not, sentenced the perpetrator for imprisonment. In addition to this, compensation is also being awarded to the victims which serves as remedy in addition to the imprisonment to the perpetrators. The remedies after a person suffers from abuse have been developed in the Indian legal system. However, the remedy does not take away the pain and trauma that the person had to suffer as a result of the treatment meted out to them.

XII. SUGGESTIONS

Some *suggestions* that can be implemented in order to ensure that the phenomenon of sexual violence and victimization eradicated from the Indian Prison System and the basic human rights of all citizens can be preserved are:

- There should be regular police trainings where they are taught about the protection of human rights and the implications and consequences of custodial violence and sexual abuse. They should be sensitized to the rights of the prisoners and taught non-violent methods of interrogation.
- A flying squad can be set up by the National Human Rights Commission and the State Human Rights Commissions who randomly visit prisons and custodial setups to ensure that there is no abusive activity taking place.
- The higher officials in the prison systems should constantly monitor their subordinates at work and ensure no shady activity takes place.
- An expert committee comprising of representatives from the Ministry of Home Affairs; Ministry of Law and Justice; State Departments of Prisons; Juvenile Facilities' Former Inmates; Criminologists; Psychologists; Victim Service Departments; Researchers and other Experts in the field of Sexual Assault.
- An Act that provides exclusively provides protection to the prisoners from the offence of prison rape and custodial torture should be implemented at the earliest.
- There should be an increase in legal awareness about the rights of prisoners in general. The states must develop modules in local and regional languages to educate prisoners about their rights so that they can speak up when they need to.
- If a prisoner or a staff member is found to engage in the act, they should immediately be suspended or put into solitary confinement until the investigation is completed.
- The prisoners must be educated about the rights of other prisoners and the consequences of indulging in the wrong activities in prison.

- The grievance redressal systems should be such that it can be easily availed and provides a quick redressal. Moreover, there needs to be a way where the prisoners can address the issue privately without alerting the other prisoners as it can further the abuse.
- The guidelines laid down by the Supreme Court need to be properly implemented. If they are followed, there will be a drastic decrease in the incidence of custodial violence.
- There needs to be development of more women prisons with women only staff who are sensitised to the mental health issues of women prisoners.

There should be adequate medical facilities in jail and the doctor can also be asked to act as a point of contact for an inmate to report abuse anonymously who can then involve the authorities.
