

**Cover Story**  
**Custodial Violence**

**INTRODUCTION**



*“Lilabati Chowdhury, seven months pregnant and a mother of two, was brutally beaten by a police patrol party, who were looking for her husband, from Beharampore police station, West Bengal, India at midnight on 7 August, 2004. She was taken to a hospital close by and was declared dead the next morning.”*

*“Suman Behera, a 22 year old boy, was taken away by the police authorities, on 1 December, 1987, at Bisra police station, District Sundergarh, Orissa, in connection with an offence of theft. He was detained at a police outpost. The next day his dead body was found on the railway track near a bridge, some distance away from Jeraikele railway station.”*

*“Abhijnan Basu, was serving his prison sentence at the Presidency Jail, West Bengal. Officers at the prison murdered him because he dared to complain about the inhuman conditions and the poor quality of food. Three prison wardens set him ablaze on 12 November, 2004. The Jailor, who is duty bound to protect the prisoners, supervised the entire incident.”*

Such reading of the morning newspapers carrying reports of dehumanising torture, assault, rape and death in police custody or other governmental agencies almost every day is, indeed, depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of the criminal justice system. As a result the society rightly feels perturbed. The society's cry for justice becomes louder.

### **WHAT IS CUSTODIAL VIOLENCE**

- The term custodial violence has not been defined under any law. It is a combination of two words custody and violence. The word 'custody' implies guardianship and protective care. Even when applied to indicate arrest or imprisonment, it does not carry any evil symptoms during custody. As Per Legal Glossary Dictionary, custody is imprisonment, the detaining of a person by virtue of lawful Power or authority.
- Section 167 of the Code of Criminal Procedure speaks about two types of custody i.e. **police custody and judicial custody**. As per section 167(1) of Cr. P.C., "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."
- So as per section 167 (1) of Cr. P.C. 'police custody' can be granted for a maximum period of fifteen days only. Police custody basically means police remand for the purpose of interrogation. In law actually a police officer has two occasions to keep a person in its custody firstly, from the period when he arrests a person till he produces the said person in the court i.e. first 24 hours of the arrest of the accused. Secondly, when the police gets remand from court after producing the accused in the court which can be extended up to a maximum period of fifteen days.
- Thereafter, a person is sent in judicial custody which in general terms means jail or prison, where an accused remains in custody till he gets bail or if convicted and sentenced to jail till the completion of sentence. As per law, 'custody' of a person begins when the police arrest him.
- 'Violence' in its literal sense has been defined as use of force by one person over another so as to cause injury (physical, mental or otherwise) to him.
- From above, it is obvious that custodial violence primarily refers to **violence in police custody and judicial custody**. It can be defined as "***an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered.***" According to Law Commission of India, crime by a public servant against the arrested or detained person who is in custody amounts to custodial violence.

- Custodial violence include illegal detention, arrest which is wrongful or on insufficient grounds using third degree method, on the suspects, humiliating them, using filthy language, not allowing them to sleep, extorting confession under pressure, padding up of additional evidence, misuse of the power regarding handcuffing not allowing to meet counsel or family member to accuse, denial of food etc.
- As regards deaths in police custody, the reasons are torture, illness, suicide or accident. Deaths in judicial custody are directly linked to the number of prison population during a given period. One of the serious problems that Indian prisons are facing today, as discussed in May 2004 issue of Human Touch, is the problem of overcrowding. Overcrowding leads to deficiencies in basic services like medical facilities, food quality and others which adversely affect the prisoners.

### **HISTORICAL PERSPECTIVE**

- Custodial violence, which includes torture, death and other excesses in police custody or prison, is not a new phenomenon. It has been in the world for ages.
- Even in **ancient Indian history**, we find ruler like 'Nanad' Mahapadam in Mauryan era who had put the entire family of 'Chandra Gupta Maurya' into prisons and only as much food was provided to entire family which was sufficient for survival of one person only. *Kautilya in Arthsastra*, speaks about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephant and bulls, cutting of limbs and mutilation etc. *Manu*, the law giver of this age emphasized the necessity of torture to protect the society from the hands of the criminals. During the *Gupta period (A.D. 320-500 A.D.)* trial by ordeal was common. In the *post Gupta period*, torture of prisoners became a method of punishment.
- In the **Mohammedan period** the Shariat law was applied to crimes; a thief hands to be cut off; life for life; tooth for tooth was the basic principle of Muslim criminal Jurisprudence which is still followed in Islamic country.
- The **British Raj** was also notorious for using violence in police custody. Men, women and children were caught, beaten and tortured to make them confess to crimes, which they did not commit. During this period political workers were picked up for questioning and if they did not provide the desired reply they were subjected to torture. The naked lying on ice, the denial of food or insufficient quantity of food, excess physical work and physical beatings were some of the methods employed during British Rule to punish law breakers mostly political prisoners and workers.

One important point which needs to be mentioned is that the perpetrators of atrocities and immoral acts were the servant of the foreign Government. ***Their judiciary, police, jails and all the laws were made for their own benefit and convenience. But we in independent India follow the same model and the same penal code without many amendments.***

Our police system is same which was prevalent during British system. It was introduced by Britishers; in the year 1861 primarily to enable their administration to have at their disposal a force at a cheap cost to help them rule the country by suppressing anti governmental forces and guided by such an objective the police became the symbol of colonial repression and were for obvious reason hated by the masses. The "Prison Act", which was passed in 1894, has also remained unchanged. The Act gives vast power to jail officials to punish prisoners if they break jail rule.

Probably mind set of peoples as well as police and rulers i.e. executives both political and bureaucracy has remained same only power has been transformed from foreign ruler to our native ruler.

### **CUSTODIAL VIOLENCE: CONSTITUTIONAL AND STATUTORY PROVISIONS**

Custodial violence raises serious questions about the credibility of the Rule of Law and administration of criminal justice system. An offender has every right to be tried and punished in accordance with the law and any punitive action taken outside the ambit of law is illegal. Besides, no matter how heinous the crime be, and howsoever dangerous be the criminal, he or she has every right to be treated with human dignity.

Thus the legal framework in India, both constitutional and statutory, contains provisions relating to safeguarding arrest, detention, custodial torture and other crimes in custody.

#### **Constitutional Safeguards**

- Torture in custody flouts ***basic rights of citizens*** and is an affront to human dignity. Thus, the prohibitions imposed by Article 20, 21 and 22 of the Constitution are directly relevant to upholding these basic rights in the criminal process.
- **Article 20(3)** provides that no persons accused of any offence shall be compelled to be a witness against himself. Of course, constitution article protects against testimonial compulsion on the premise that such compulsion may act as a subtle form of coercion on the accused.

- The protection of life and liberty and protection from or against arrest of a citizen are also contained in our constitution. This is provided under **Article 21** of Constitution which says that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. The expression personal liberty is not limited to bodily restraint or to confinement to prison only as has been illustrated by Hon'ble Supreme Court in *Kharak Singh V. State of U.P.*
- **Article 22(1) and 22(2)** of the Constitution are also relevant for the present purpose. Article 22(1) provides that no person who is arrested shall be detained in custody without being informed as soon as may be, of the ground for such arrest, nor shall he be, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by legal practitioner of the choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

---

**Statutory Safeguards**

---

- The substantive law (**Indian Penal Code, 1861**) provides punishment of a person causing injury, torture or death on the body of a person in custody. The procedural law (**Criminal Procedural Code, 1973** and **Indian Evidence Act, 1872**) contains several provisions safeguarding the legal rights of a person in custody.
- Sections 330, 331 & 348 of IPC; Sections 25 & 26 of the Indian Evidence Act; and Section 76 of CrPC were enacted to curb the tendency of policemen to resort to torture to extract confessions etc.
- In addition, the **Protection of Human Right Act, 1993** provides institutions of the National and State Human Rights Commissions as well as Human Rights Courts for better protection of human rights of a person in custody. However, the institutions of NHRC/SHRCs are ineffective. It ends up under-reporting the extent and volume of human rights violation in country due to flawed system of information collection and reporting. It has no authority to check the rampant violations done by police. There is no independent body to inquire into reported cases of torture. Commissions' orders are mere recommendations and are often ignored by national and state government.

### ***International Obligations***

Apart from the Constitutional and statutory obligations, India has to adhere to many of the international conventions that it has ratified. India has ratified, acceded and signed the International Declarations, Covenants, Conventions and treaties such as Universal Declaration of Human Rights( UDHR), International Covenant on Civil and Political Rights ( ICCPR), International Covenant on Economic, Social and Cultural Right (ICESCR), International Convention on the Elimination of All forms of Racial Discrimination( ICERD), Convention on the Elimination of All Forms of Discrimination against Women( CEDAW), Convention on the Right of the Child (CRC), Convention against Torture and Other Cruel, inhuman or Degrading Treatment and Punishment (CAT), and the International Convention on the protection of the Rights of All persons against Enforced Disappearance (CPAED). This apart, the UN Declaration on Basic Principles of Justice for Victims of Crime and abuse of Power is relevant.

### **CUSTODIAL VIOLENCE AND THE COURT'S JUDGEMENTS**

The Constitutional and the relevant statutory provisions on the subject have been supplemented by the significant judicial pronouncements. The following are the illustrative decisions:

1. In case of **Dastagir v. State of Madras 1960**, it was held that punishment which has an element of torture is unconstitutional.
2. The apex court in case of **Raghubir Singh v. State of Haryana 1974** held that the society was deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril, when the guardians of law gore human rights, to death. This development is disastrous our human right awareness and humanistic constitutional order.
3. In case of **Inderjeet v. State of Uttar Pradesh 1979**, the Apex Court hold the view that prison restrictions amounting to torture, pressure or infliction and going beyond what the court authorities, are unconstitutional. Further it extended that an under-trial or convicted prisoner cannot be subjected to physical or mental restraint, which is not warranted by the punishment awarded by the Court, or which amount to human degradation (it was reiterated in the case of **Sheela Barse v. State of Maharashtra 1987**).

4. In **Francis Corallie Mullin v. Union Territory of Delhi 1981**, the Supreme court has condemned cruelty or torture as being violative of Art 21 in following words ” *any form of torture and cruelty or degrading treatment would be offensive of human dignity and it would on its view , be prohibited by article 21. It would be seen that there is implicit in article 21 the right to protection against torture or cruel, inhuman which is enunciated in Article 5 of Universal Declaration of Human right and guaranteed by Article 7 of International Covenant on Civil and Political Rights*”.
5. The Apex Court through judicial activism evolved a right to compensation in cases of established unconstitutional deprivation of personal liberty or life. The Bhagalpur blinding case was the first case where the question of monetary compensation was considered by the Supreme Court. In case of **Nilabati Behera v. State of Orissa 1993** it was held that the citizen complaining of the infringement of indefeasible right under Article 21 of the Constitution can't be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. It was said that if death in police custody occur, the deceased is entitled for monetary compensation under Article 32 and 226 of constitution of India. This was not a remedy in tort, but one in public law based on strict liability for the contravention of fundamental rights to which the principle of sovereign immunity doesn't apply.
6. **D.K. Basu v. State of West Bengal 1997**: The Supreme Court held custodial death is perhaps one of the worst crime in a civilized society Governed by the rules of law. The rights inherent in Article 21 and 22 (1) of the Constitution require to be jealousy and scrupulously protected. Court cannot wish away the problem. Any form of torture or cruel inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation interrogation or otherwise if the functionary of the Government become law breakers, it is bound to be contempt for law and would encourage lawlessness and everyman would have the tendency to become a law unto himself there why leading to anarchanism. The Supreme Court also issued the following requirement to be followed in all cases of arrest or detention till legal provision is made in that behalf as preventive measures.
  - The police officer carrying out arrest of the arrestee self prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made.

- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre shall be entitled to inform one friend or relative or other person known to him or having interest in his welfare as soon as practicable, that he has been arrested and is being detained at the particular place.
  - The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal head organization in the district and the police station of the area concerned telegraphically within a period of 8-12 after the arrest.
  - The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is detained.
  - An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.
  - The arrestee should, where he so requests, be examined at the time of his arrest of major and minor injuries. The inspection memo must be signed by both the arrestee and the police officers effective the arrest and its copy provided to the arrestee.
  - The arrestee should be subjected to medical examination by a trained doctor every 48 Hrs during his detention.
  - Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
  - The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
7. **Mani Kumar Thapa v. State of Sikkim 2001:** The Apex court, while deciding on a case where the accused police officials contacted the deceased near his house who was taken by them in the jeep and thereafter his body was not found, gave following suggestions-
- The police should be trained to use new scientific and parallel and psychological subjective techniques instead of using torture.

- The working conditions of the police personnel should be improved and they should be provided with more promotional avenues on seniority basis.
  - The control of the Police should be brought under the Governor of the concerned State so that the police could work in a clean atmosphere free from political pressures.
  - A separate offence provision should be made by amending Section 302 of the Indian Penal Code regarding treatment of custodial death as murder.
  - The adequate medical facilities should be provided in jails so that in case of emergency proper and timely medical help could be provided to the persons in the jail custody.
  - A counsel should be allowed to be present during interrogation to check the custodial violence by investigating officer.
  - Section 114-B in the Indian Evidence Act, 1872 as recommended by the Law Commission in its 113th report, should be inserted to introduce a rebuttable presumption that injuries sustained by a person in police custody were caused by the police officer.
  - The compensation in case of custodial deaths should be a State responsibility. The State Government in turn can recover the amount of compensation from the offenders. For implementing this, a separate Tribunal/Board should be set up at the District level.
8. In a decision of the Supreme Court in **People's Union for Liberties v. Union of India Case 2004** which was case from Manipur, a disturbed area, in which case there was a fake encounter and two persons alleged to be terrorist- were seized by police, taken to a distant place and shot at causing their death it was held that such administrative liquidation cannot be permitted and interference of the Court is called for. The Apex Court awarded a compensation of rupees 1 lakh to families of each of the deceased.

#### **SCENARIO OF CUSTODIAL DEATHS**

However, despite these constitutional and legal provisions, custodial violence continues to occur. This is evident from the data of National Crime Record Bureau (NCRB) where it has reported that many as **1,275 people died in police custody in India between 2001 and 2013** but less than 50% of custodial deaths led to a case being registered.

Although, overcrowding, malnutrition, unhygienic conditions and lack of medical care are some of the factors of death in police and judicial custody, but custodial violence remains the common cause of deaths in prisons and lock-ups.

Table below gives details of custodial deaths reported by state governments to the National Human Rights Commission (NHRC). It may be mentioned here that according to the December 1993 guidelines of the NHRC, every incident of custodial death or rape must be reported by the state governments to the Commission within 24 hours of occurrence. Information on custodial deaths should be followed by a post-mortem report, a video-graphy report on the post-mortem examination, an inquest report, and a magisterial enquiry into deaths.

Year	Police Custody	Judicial Custody	Others	Total
1993-1994	No Available	Not Available	Not Available	34
1994-1995	111	51	9	171
1995-1996	136	308	0	444
1996-1997	188	700	0	888
1997-1998	191	807	0	998
1998-1999	180	1106	0	1286
1999-2000	177	916	0	1093
2000-2001	127	910	2	1039
2001-2002	165	1140	2	1307

### **CAUSES OF CUSTODIAL VIOLENCE**

In spite of the fact that every segment of the society feels concerned about custodial violence, over the years it has remained unabated. It seems to be on rise every year, in spite of the fact that rate of literacy has increased and the people have become aware about their rights and duties. The main arm of the criminal justice system that deals with people in custody is police. It will, therefore, be necessary to find out ailments, which govern this agency resulting into abuse of those who are in their custody. In this section, an attempt is made to find out as to what lies at the root of the problem of custodial violence. For this it is essential to study the conditions under which police works and to

find out their mode of operation in dealing with the accused persons. The basic causes for Custodial violence can be grouped in the following categories: -

### **Work Pressure**

- A very important reason for continuing brutal behaviour by the Police is pressure. The sources of pressure are several, but basically they relate to performance or output beyond the narrow confines of police role, in spite of constraints on adequate role performance. Policemen have to deal with crime and disorder not on bits of paper but in the raw, directly. This generates lot of pressure, both from the people and the government.
- The pressure on police is basically due to ***changing nature of crimes, infrastructural constraints, and operational inefficiencies.***
- The police in India has to perform a difficult and delicate task in view of the deteriorating law and order situation, riots, political turmoil, student unrest, terrorist activities, increasing incidence of bribery, corruption, tax evasion, violation of fiscal laws, smuggling and money-laundering.
- Further dealing with organized criminal gangs, insurgent and terrorist groups is also completely different from dealing with ordinary criminals. This category of criminals is well-trained, hardened, and equipped with ultra-modern weapons explosives and many other devices of committing crimes without leaving any evidence of their crime many a time. An ordinary policeman carrying a small revolver or even a gun ordinarily provided to him is invariably no match to them.
- The Indian police today finds itself handicapped not in its numerical strength but its inadequate infrastructural facilities like modern weaponry and equipment, transport and communication network and, more importantly, need-based training which is of paramount importance to make it more efficient and effective instrument of law enforcement.
- In addition to the constraints of the system are the constraints arising out of its actual operation. The outcome of Police efforts as they lead to deterioration of evidence and thereby reduces the chance of conviction in a court of law. Medical and legal reports are often received very late. TIP's (Test Identification Parade) are often delayed considerably, before which the accused are bailed out, thus defeating the purpose of holding such a parade. In our accusatorial system, a person is presumed innocent unless his guilt is proved beyond reasonable doubts and thus, the degree of proof, which is required on part of prosecution, to secure conviction is exceedingly

high. As per the report of National Police Commission, an investigating officer is able to devote only 37% of his time in investigation while the rest of his time is consumed in law and order duty, VIP and security duty, court attendance and other miscellaneous duties. Then there is political and bureaucratic influence and interference, collusion with rich and influential people and dancing to their tune. Thus, in a trial the chances of conviction are roughly one out of four. But results have to be achieved as quickly as possible or else the officer is transferred. So a shortcut is required to achieve result and for them.

- The UP Police Commission 1970-71 observed, *“An accused or suspect may be kept under Police custody for a maximum period of 24 hours as per law. In the meanwhile, a great deal of information remains to be elicited from the suspect especially in offences involving property, on recovery of which the success of prosecution greatly depends. Whenever the investigating officer finds it practicable, he records arrest after quite a few days of unrecorded and illegal detention. Thus the pressure of securing maximum information in the available time implies the investigating officer to use shortcut methods.”*

#### **Positive re- enforcement**

- No matter what the constraints are, results have to be produced. As things are, a policeman, say a sub Inspector, who is brutal, who operates only on short cuts and is unscrupulous about the means he uses, produces results. The production of result ease the pressure on his superiors, even wins the acclaim of all and sundry, with the result that all his sins are and have to be forgiven. In due course and sometimes earlier, such a policeman rises in his hierarchy.
- This reinforces his use of third degree methods not only in his own eyes but also in the perceptions of his peer group and his subordinates. Sometimes the expertise at third degree of some policeman receives such wide appreciation that other policeman confronted by an intractable situation or a case, requests for his assistance. He then goes like a superior performer 'tackles' the suspect and produces results, gathering a reward in the bargain. Thus, positive reinforcement of Police violence takes place because it produces results and produces them fast, at least quicker than otherwise.

#### **Punitive Violence**

- The whole tenor of the criminal justice system is punitive, hence a subsystem of it expected to be of service to the people cannot so operate. On account of the constraints of the system, the nature of the police function also becomes punitive,

and many policemen see their brutality as extension of the punitive role of the organisation.

- There are few honest but misguided policemen who believe in not letting the criminal get away with it. It is genuinely believed by them that except for a sound beating, there is no other way of controlling criminals. U. P. Police Commission 1970- 71, stated, "*The reason for use of third degree method is born out of wrong convictions. There is cross-section of the people and the police and a sizeable one at that, which believes in the efficacy of third degree methods alone in dealing with criminals, particularly hardened ones. They say that a jail term is no more a deterrent to the criminals. They remain happy there, particularly as conditions inside the jails have begun to score over conditions outside and the only thing they are scared is a beating by the police....*"

### **Police Sub- culture**

- The sub-culture of our police includes use of third degree methods. The police sub - culture is strengthened by alienation, cynicism, law-esteeem in society, a degree of pariah feeling, conflicting demands made of policeman, inconsistent judgment of their work, all forcing them into a corner.
- In this situation a policeman finds succour among others of his community with whom he identifies, leading to group solidarity, which in turn provides a sense of security against the hazards of his occupation, and a basis for a medium of self-esteem and some social affiliation in spite of the irregular hours of his work. Thus develops the culture of group that which demands greater conformance to threats, tortures, rather than rules, regulations, orders etc.
- The police officers use their official position to manipulate evidences against themselves. Death in custody is generally not shown on the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from jail. Any complaint against torture is not given attention because of ties of brotherhood. No direct evidence is available to substantiate the charge of torture or causing hurt resulting into death, as the police lock- up where generally torture or injury is caused is away from public gaze and the witnesses are either policemen or co-prisoners who are highly reluctant to appear as prosecution witness due to fear of retaliation by the superior officers of the police.

### Lack of Proper Training

- Lack of knowledge of application and experience of scientific methods in crime investigation and interrogation of accused, the utterly inadequate training given to constables, the general absence of any attention to the necessity for keeping temper, being civil and respectful to the public, avoiding brutality or unnecessary harshness, are the factors that which leads to violence.
- **Gore committee on Police Training 1972**, was of is the view that one of the objectives of training should be to inculcate the right attitude towards the public which consists is never forgetting that the civil servant is the servant and not the master of the community. Police training should include a separate course to impart them knowledge about the human rights and that they are here to protect the human rights and not to infringe them.

### Greed for Money And Personal Emnity



- This is the most hateful reason for custodial torture and one that seems to be on the increase. At the level of Police Station, a number of Policeman use brutality to extract money from suspects and innocent persons. The legal situation and the nature of evidence facilitate the process of making SHO very powerful and giving what he does an air of finality, which gives him the unintended power to extract money and escape the corrective process of supervision. The courts give enormous importance to the FIR and what kind of FIR is actually written depends on the policeman on duty. Investigating a dacoity case, he can always threaten to implicate an honest man, even beat him up or simply keep him hanging about the police station until he gives him money.

- The victims of custodial violence are people from poor and backward section of society with little political or financial power to back them. Personal enmity, caste and political consideration and at time pecuniary benefits becomes important consideration for custodial death rather than investigation of cases.

### **Social Acceptance**

Another reason of custodial violence can be the social factor. In our country, we are accustomed to think in terms of 'an eye for an eye' and 'tooth for tooth'. Therefore, the Society tacitly expects and approves the use of violence on suspects to get the truth. Complainants themselves urge the police to use force or violence to break a suspect. Therefore, in a Society, where the public are indifferent to the use of force on fellow human beings, policemen gets, as it were, social support for these illegal acts.

### **WAY FORWARD**

To streamline the criminal justice delivery and restore human rights, we need to address custodial deaths. As regards deaths in police custody, the reasons are torture, illness, suicide or accident. Deaths in judicial custody are directly linked to the number of prison population during a given period. So, to lessen these deaths and to uphold constitutional rights of prisoners, following steps could be taken:

- **Infrastructure:** One of the serious problems that Indian prisons are facing today is the problem of overcrowding. Overcrowding leads to deficiencies in basic services like medical facilities, food quality and others which adversely affect the prisoners. Country's 1,401 jails hold 4,19,623 prisoners against the capacity of 3,66,781. There is a need to address this issue immediately.
- **Installation of CCTV:** For better monitoring of activities in Jail, it could be of much help. In this regard efforts of Bihar, Andaman & Nicobar Islands and Puducherry are laudable which could be implemented throughout the country.
- **Psychological consultation** to support prisoners with mental breakdown and other health amenities needs to be strengthened.
- **Police Reform:** Indian constabulary is still working on British model where use of power is still prevalent. The police certainly has no right to inflict brutality on a helpless person under its custody ignoring the canons of law. So, there is a need to make police more aligned to present need of society. Some of the reform which require are:

- There is a strong need for better custodial management. Role of police personnel is crucial in this regard. They should be trained in matters pertaining to human rights and prison management.
- Equipping police to modern method of enquiry and investigation so that use of torture and violence could be minimised.
- Professional police service which is efficient, effective, responsive to the needs of the people and accountable to the Rule of the Law.
- A separate prison service that have mastery in rehabilitation and reformation of prisoners.
- In the opinion of the NHRC, the **Human Rights Cells** established by the State Governments should play a more proactive role in improving conditions in the prisons, including the provision of health and related facilities.
- **Amending Legislations**
  - A separate offence provision should be made by amending Section 302 of the Indian Penal Code regarding treatment of custodial death as murder.
  - Take early action on the suggestion of the Indian Law Commission to the effect that proposed Section 114(B) be inserted in the Indian Evidence Act to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a Police Officer as well as the suggestion for amendment in Sec. 197 of the Cr. P.C. to obviate the necessity for governmental sanction for the prosecution of a police officer where a prima-facie case has been established in an inquiry conducted by a Sessions judge in the commission of a custodial offence.
  - Implement the suggestion by the National Police Commission that there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt.
  - There is also a need to amend Section 36(1) of the Protection of Human Rights Act, 1993 dealing with 'matters not subject to the jurisdiction of the Commission', as this Section is used by State government to bypass the NHRC. Constant vigil by organisations like NHRC and different NGOs working for protection and promotion of human rights coupled with efficient custodial management would be able to address the problem of custodial death, rape and torture in the country.

- **Independent judicial investigations into custodial deaths:** The possibility of police officers being convicted dwindles at the stage of filing charge sheet itself: 34 policemen are charge sheeted for every 100 cases registered, and 12% of the charge sheeted policemen are convicted. For this an independent investigation into custodial deaths by the system of coroner's inquest as in United Kingdom could be set up where a coroner (usually a qualified advocate and or medical practitioner) investigates the circumstances surrounding a death in custody.
- **Human Right Courts** could be set up where these types of cases could be fast tracked and perpetrators could be punished according to rule of law.
- Strengthening **free legal aid** to poor and marginalised as they are the worst victims of these violence and have no money or awareness to get justice. Legal rights are denied because there is no one to defend people against violations. The law guarantees every person in custody the right to a lawyer during interrogation — this can be strengthened to facilitate access to a lawyer at the earliest point after arrest.

## **CONCLUSION**

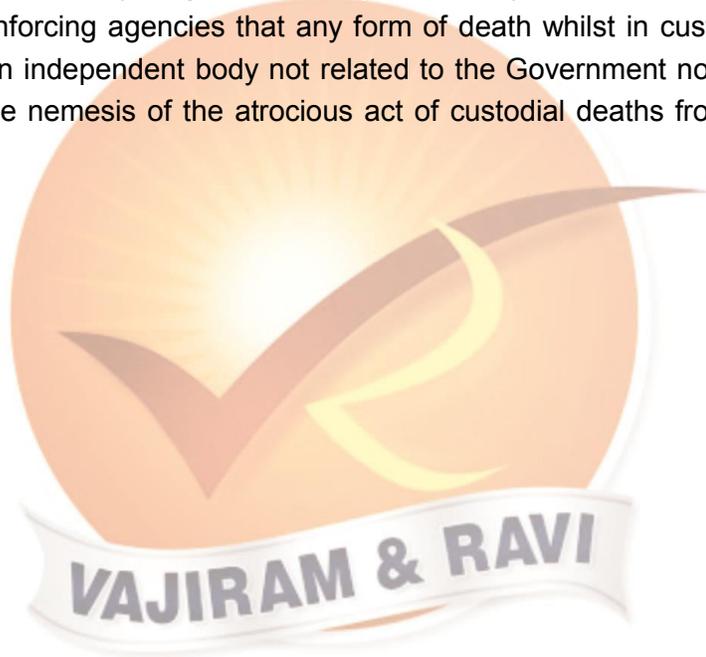
Custodial violence is not a new phenomenon and is prevailing in our society from the ages. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizen. It is committed under the shield of uniform and within four walls of a police station or lock-up, the victim being totally helpless.

Despite several initiatives in recent years, torture and ill treatment continues to be endemic throughout India and continues to deny human dignity to thousands of individuals. Custodial torture has become so common these days that not only the police and bureaucracy but even people take it for granted as a routine police practice of interrogation. The result is that the news of such outrageous conduct causes nothing more than a momentary shock in the society. When a custodial death occurs, there is a public uproar, which either dies down with time or at the most subsided by constituting an enquiring committee.

The law in all countries authorises the police to use force under certain circumstances. This authority is in fact, basic to its role and cannot be questioned. It is a part of policeman's legal mandate. We do accept that police works under so much of pressure and other disturbances, but the police certainly has no right to inflict brutality on a helpless person under its custody ignoring the 'canons of law'. In a democratic country like India, *it's the people and not the police who are the real masters as the sovereign*

*power is rested with them.* The police are simply the agent of the government which is ultimately accountable to the people.

One of the worst crimes in civilized society governed by the Rule of Law is custodial deaths. Custodial deaths are like a cancer in the blood of society. Thus, our society needs to ensure that every single citizen is protected by our laws, and send out clear pictures to law enforcing agencies that any form of death whilst in custody will be fully investigated by an independent body not related to the Government nor the Police and finally, remove the nemesis of the atrocious act of custodial deaths from our “civilized” society.



# VAJIRAM & RAVI