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# Violation of Human Rights by State Agencies: A Case Study of Custodial Violence in J&K

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**Abstract** – Violation of human rights in India is a complex process, and often starts with family members handing over responsibility for the safety and well-being of the trafficked person to others known to them, but then ending up trafficked by a third set of persons and into the profession as a Commercial Sex Worker (CSW), commonly known as a prostitute. This paper is mainly focuses on violation of human rights.

**Keywords:** Violation, Human Rights, Agencies, Custodial Violence

## 1. INTRODUCTION

The discourse of development has been undergone a paradigmatic shift over the few decades. The human development has become an existing debate of developmental thinking in contemporary period. As the *first Human Development Report* has argued, Human beings are the real wealth of a nation, and the basic objective of development is to create enabling environment for enhancing their achievements, freedoms, and capabilities including self-respect and human rights. In this context issue of governance has moved at the forefront of the agenda for sustained human development in recent years, the. Experience from many countries shows that while good governance can help secure human well-being and sustained development, it is equally important to recognize that poor governance could well erode the individual capabilities, as well as institutional and community capacities to meet even the basic needs of sustenance for large segments of the population (National Human Development Report 2001 ). It has now been fully realized that poverty is not merely the result of bad economy, it is also due to bad governance. Being voiceless and powerless that makes it very difficult for the poor and disadvantaged people to access justice and easy prey for the state and its agencies like the police and the elite class to deny them the access.

## 2. REVIEW OF LITERATURES:

Human rights advocates agree that, sixty years after its issue, the Universal Declaration of Human Rights is still more a dream than reality. Violations exist in every part of the world. For example, Amnesty International's 2009 World Report and other sources show that individuals are:

- Tortured or abused in at least 81 countries
- Face unfair trials in at least 54 countries
- Restricted in their freedom of expression in at least 77 countries

Not only that, but women and children in particular are marginalized in numerous ways, the press is not free in many countries, and dissenters are silenced, too often permanently. While some gains have been made over the course of the last six decades, human rights violations still plague the world today.

In spite of various efforts initiated by government, non-government organizations, and media to combat custodial crimes including torture in police custody. However, torture is endemic in India and this is a fact acknowledged by the authorities and widely documented. Police forces are poorly trained on investigation methods and on the absolute prohibition of torture and cruel, inhuman or degrading treatment. Most cases of torture by state officials occur in police custody, and it is widely acknowledged by governmental and non-governmental studies that the police operate in a system facilitating the use of torture and ill-treatment. Torture is systematically used in the criminal justice system as a method of investigation: the increasingly dysfunctional criminal justice system and torture in custody constitute a vicious circle of deficient interrogation, falsified investigation results and distrust of the criminal justice system. It appears that there exists a certain perception in India that torture is acceptable under extreme circumstances, and for "hardened criminals" and "terrorists". The overload within the criminal justice system also contributes to public tolerance towards violence as a means of justice. The

consequence of this is a lack of investigation into allegations of torture, let alone of “mere beatings”, and impunity for the perpetrators. Corruption within the police equally provides a ground for the practice of extortion and threats. It is reported that members of the medical profession refuse to examine torture victims or document injuries, often because of fear and threats. As a result, the number of custodial deaths is alarmingly high. The Supreme Court and High Courts of India as well as the National Human Rights Commission have handed down many recommendations to achieve a better prevention against torture and to provide for redress measures for victims, but it has not lead to an eradication of the phenomena of custodial crimes including torture in police custody (International Commission of Jurists 2003).

### 3. CUSTODIAL VIOLENCE:

Custodial crime means “To take a person in custody is to limit his freedom. Taking advantage of such a situation, the custodian may attempt to commit crime on the person under custody. Individuals come under the police custody for various reasons like arrest, police remand or the police custody per se is unauthorized. Most prevalent crimes in police custody are: assault of various types, rape and murder (Crime in India 1997).

According to Custodial Crimes (Prevention, Protection and Compensation), Bill, 2006 ‘Custodial Crime’ means “an offence caused against any arrested person or a person in custody when that person was in the custody of a police officer or a public servant who has power under any law to arrest and detain a person in custody, by the police officer or the public servant concerned having the custody of that person during that period.”

The Supreme Court of India in the landmark judgment of SAHELI-A Women Resource Centre v. Police Commissioner of Delhi( A.I.R. 1990 SC 513) interpreted the “Custodial Crimes” is a crime occurring during the period when some limitation is placed upon the liberty of the person either directly or indirectly, by the police. It precisely extend the meaning of custodial commission of crimes that it is immaterial whether or not the injury, torture or assault occurs within premises of police station or police post( chowki). What really matters is the control of police over the victims.

According to United Nations Special Rapporteur on Torture (2008), “Custodial Violence against women very often includes rape and other forms of sexual violence such as threats of rape, touching private parts of a woman, being stripped naked, invasive body searches, insults and humiliations of a sexual nature etc.

Year	Deaths in Police Custody	Rapes in Police Custody
1995	31	6
1996	49	6
1997*	40	6
1998	46	4
1999	65	4
2000	78	2
2001	90	0
2002	84	3
2003	94	1
2004	86	2
2005	128	7
2006	89	2
2007	118	1
Total	978	44

Source: Crime in India 1995-2007

Table 1: shows the upward trend of custodial deaths in the police custody over period of time. In contrast, the cases of rape in police custody have been increased since 1995 till 2007 except in 2005, which registered highest number of rape cases over a decade.

Year	Custodial Deaths	Custodial Rapes	Disappearances	Illegal detention/ Arrest	False implication	Other Police Excesses*
1993-94	34	01	00	00	00	61
1994-95	111	03	55	114	21	497
1995-96	136	00	39	112	64	1115
1996-97	188	03	175	282	237	1643**
1997-98	193	01	12	330	237	1413
1998-99	180	00	27	436	634	2252
1999-00	177	00	54	1,157	1647	5783
2000-01	127	01	54	1,257	821	3,947
2001-02	165	00	80	1,975	1,768	4,638
2002-03	183	02	263	3595	2783	9622***
2003-04	162	00	05	660	420	2344
2004-05	136	04	24	9871	1213	6488
2005-06	139	05	19	909	606	3615
Total	1931	20	807	20,598	10451	43318

Table 2: demonstrates increasing trend figures of custodial crimes over the years despite stringent instructions and guidelines issued by National Human Rights Commission to police authorities. This shows that police establishment is not serious to take cognizance on the guidelines issued by the NHRC for prevention of custodial crimes.

#### The right to live free:

“Everyone has the right to life, liberty and security of person.” An estimated 6,500 people were killed in 2007 in armed conflict in Afghanistan—nearly half being noncombatant civilian deaths at the hands of insurgents. Hundreds of civilians were also killed in suicide attacks by armed groups.

### 4. CONTEXTUALIZING CUSTODIAL VIOLENCE:

Custodial violence and abuse of police power have emerged a major issue of human rights concern and one of the root obstacles to democracy and development of human well-being in contemporary societies. Torture caused custodial violence has devastating effects on physical and mental health as well as social functioning of the individuals, their children, families, communities and society at large. The victims remain in a state of perpetual fear and horror whenever they remember their custodial

agony, hatred, trauma and probably never able to lead a normal life in many parts of the world (Cohen and Corrado 1999; Camile 2000; IBID, 2000, 2006, 2008 and United Nations 2000 and 2008). The practice of custodial violence in the developing countries like India is, however, more difficult and complex. A large number of cases of police brutality take place not because of individual aberration, but because of systematic compulsions. The practice is more widespread and gone unchecked since British days if there was no tacit support of senior police officials, bureaucrats, politicians and judiciary. The fact is that the practice also enjoys the support of a large section of the public in the mistaken belief that it is necessary for effective maintenance of law and order (Marwah 2003).

### CONCLUSION:

Human trafficking is a violation of human rights and any strategy to eliminate trafficking should be framed within a human-rights perspective by placing the victim at the Centre. A focus that is primarily directed to the prosecution of traffickers has the potential to ignore or minimize the human rights of those who have been trafficked by failing to adequately protect the trafficked women.

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