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# Custodial Death: A Legal Study

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## ABSTRACT

*The term custodial violence has not been defined under any law. It is a combination of two-word 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. In a law dictionary the word 'custody'; has been defined as charge and with regard to a person in imprisonment: judicial or penal safekeeping. As Per Chamber Dictionary, the condition of being held by the police, arrest or imprisonment is called 'custody'. As Per Legal Glossary Dictionary, Custody is imprisonment, the detaining of a person by virtue of lawful Power or authority. Custodial violence is amongst the worst crimes in any civilized society. It is a blatant violation of human dignity—it strikes at the very roots of the rule and law. Custodial violence and abuse of power is not only peculiar to India but it is also widespread. It has been the concern of the international community as the problem is not a regional problem but is universal and the challenge is almost global. Third degree torture and custodial deaths, rape, molestation etc. have become an intrinsic part of police investigations and the injury inflicted on the inmates is sometimes unbearable.*

**Keywords:** human dignity, the international community, custodial death etc.

## I. CUSTODIAL VIOLENCE: MEANING

The term *custodial violence* has not been defined under any law. It is a combination of two-word 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. In a law dictionary<sup>2</sup> the word 'custody'; has been defined as charge and with regard to a person in imprisonment: judicial or penal safekeeping. As Per Chamber Dictionary, the condition of being held by the police, arrest or imprisonment is called 'custody'<sup>3</sup>. As Per Legal Glossary<sup>4</sup> Dictionary, Custody is imprisonment, the detaining of a person by virtue of lawful Power or authority.

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<sup>2</sup> P. RamanathaAiyer: The Encyclopedic Law Dictionary with Legal Maxim (1992) : Wadhwa & Company Nagpur, India

<sup>3</sup> Chamber Dictionary: (1983) Allied Publisher p. 330

<sup>4</sup> Legal Glossary (1988) Ministry of Law and Justice, Govt. of India

Section 167 of the Code of Criminal Procedure speak 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. Pc. ‘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 occasion 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 accuse. Secondly, when police gets, remand from Court after producing the accuse in the court which can be extended up to a maximum period fifteen days, thereafter, a person is sent in judicial custody which in general terms mean jail or prison, where an accuse remain in custody till he gets bail or if convicted and sentenced to jail till the completion of the sentence. As per law, ‘custody’ of a person begins when the police arrest him.

Another type of Custody as mentioned earlier is ‘judicial custody’ which means sending a person in jail or prison. As per section 3 (1) of ‘*The Prison Act, 1894*’, ‘Prison’ means any jail or place used permanently or temporarily under the general or special order of a State Government for the detention of prisoners and include all land and building appurtenant thereto, but does not include:-

- (a) Any place for the confinement of prisoners who are exclusively in the Custody of police; or
- (b) Any place specially appointed by State Government under section 541 of the old Criminal Procedure Code, 1882,
- (c) Any place, which has been declared by the State Government by general or special order to be subsidiary jail.

The term ‘violence’ is the state or quality of being violent, excessive unrestraint or unjustified force, outrage perforate injury. ‘Violence’ in its literal sense has been defined as the use of force by one person over another so as to cause injury to him. The injury may be physical, mental or otherwise—the simple definition of violence is behaviour designed to inflict injury on a person or damage to property. Custodial violence is a term, which is used for describing violence committed against a person by a police authority. Thus, custodial violence 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.<sup>5</sup> According to Dr S. Subramaniam, “Any use of force threat psychological pressure is termed as custodial violence.”<sup>6</sup> According to Justice B.P. Jeevan Reddy, “Custodial violence includes torture, death, rape and excessive beating in police custody”.<sup>7</sup>

Although overcrowding, malnutrition, unhygienic conditions and lack of medical care are some of the factors of death in police and judicial Custody, custodial violence remains the common cause of deaths in prisons and lock-ups. The custodial violence is a generic term and includes all and every type of torture, third degree, harassment, brutality, use of force not warranted by law, etc. custodial violence include illegal detention, arrest which is wrongful or on illegal 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. However, since the torture or third degree in the most common and prominent form of custodial violence by the police.

The police officials commit an act of violence upon the persons in their custody under the guise of investigation and interrogation. The heinousness of this crime is that it is committed upon the citizens by the very person who is considered to be the guardian of the citizens. It is committed under the shield of uniform and authority within the four walls of Police Station or lock up, the victim being totally helpless in these circumstances. The protection of an individual from torture and abuse of Power by police and other law enforcing officers is a matter of deep concern in a free society.

#### **(A.)Aims & objectives of the research**

This comprehensive research on “DEATH IN JUDICIAL CUSTODY: A LEGAL STUDY” is focused on doctrinal study of right to privacy in advancements technology era, materials for which have been collected from both primary and secondary sources.

The study was undertaken examines the cases of custodial crimes. But all kinds of custodies

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<sup>5</sup>S.K. Ghosh: Politics of Violence (1992), Ashish Publishing, Delhi

<sup>6</sup> Dr. S. Subramaniam : Human Rights International Challenges (2004), Manas Publications, Delhi (India)

<sup>7</sup> Justice B.P. Jeevan Reddy, a paper presented in seminar: “Custodial Crime, An Affront to Human Dignity, Human Right Year Book 2001, Universal Law Publication Pvt. Ltd., New Delhi, India.

and cases relating to them could not be undertaken by the researcher. For the purpose of the qualitative inquiry of the present study, cases of custodial crimes were included as part of the study. Inclusion criteria adopted includes the cases recorded by various agencies such as National Human Rights Commission, District Crime Records Bureau, local media reported and social activist referred cases. The exclusion criteria has also been taken into consideration while focusing on the study. Therefore, alleged custodial violence and fake encounter deaths, false implications and violence against police are excluded from the present study. In recent years, the protection of human rights of persons in custodial institutions has emerged as vital issue of criminal justice. Since, the establishments of National Human Rights Commission and proactive role played by Supreme Court and various High Courts, the complexity of custodial crimes in India has been highlighted. The present study focuses on causes, consequences of custodial violence and critically examines the preventive and remedial measures to mitigate the causative factors in combating the menace of custodial crimes and strengthens preventive and remedial measures to rehabilitate the victims of custodial crimes. Descriptive, analytical, informative and evaluative methods have been adopted to draw inferences and conclusions. This study is conducted in the various libraries. In order to achieve the objective of the study.

#### **(B.) Research hypothesis**

The Jurisprudence against Custodial Death is in rudimentary stage in India. In spite of the dynamism and guidelines issued by the Apex Court, the other branches of the government- the Executive and the Legislature, have failed to achieve the norms set at international level, at some of the countries and the Supreme Court directives itself.

#### **(C.) Research problem**

The main hypothesis of said research is to analyze the custody death. The study emphasizes on the condition of prison reform and status of the prisoners in Indian prison. The study examines the to capture the in-depth understanding to the phenomena of custodial violence from the point of view of participants, victims, relatives, officials, academicians etc. Further, it focuses on the norms and conduct which should be followed by the government and prison department. And finally it will reach over some conclusion and suggestion regarding above said issue.

#### **(D.) Research methodology**

Researcher in this dissertation has relied mainly on Doctrinal Method in the research with a combination of methodology which includes theoretical analysis of the concepts and explains in-depth of DEATH IN JUDICIAL CUSTODY: A LEGAL STUDY.

**(E.) Research questions**

- Why do police and other governmental agencies use force or violence or torture during investigation?
- What are the laws at national and international level to avoid or to reduce custodial violence, rape and deaths?
- What are the loopholes in the laws?
- What is the response or action was taken by the judiciary in convicting personnel against whom complaints have been made?
- What may more remedial measures be adopted to curb or eradicate custodial death from India?

**(F.) Scope & limitations of the research**

It remains to consider what are the limitations of this right to privacy, and what remedies may be granted for the enforcement of the right. To determine in advance of experience, the exact line at which the dignity and convenience of the individual must yield to the demands of the public welfare or of private justice would be a difficult task; but the more general rules are furnished by the legal analogies already developed in the law of slander and libel, and in the law of literary and artistic property.

**II. LEGAL STATUS & RIGHTS OF THE ARRESTED PERSON****1) Right To Silence**

The 'right to silence' is a principle of common law and it means that normally courts or tribunals of fact should not be invited or encouraged to conclude, by parties or prosecutors, that a suspect or an accused is guilty merely because he has refused to respond to questions put to him by the police or by the Court. The Justice Malimath Committee writes about the origin of the right to silence that "it was essentially the right to refuse to answer and incriminate oneself in the absence of a proper charge. Not initially, the right to refuse to reply to a proper charge." The Justice Malimath Committee's assumption is that the right to silence is only needed in tyrannical societies, where anyone can be arbitrarily charged. It assumes that whenever a charge is "proper", there is no need for protection of the accused. In this backdrop it becomes necessary to examine the right to silence and its companion right against self-incrimination. These are the two aspects of fair trial and therefore cannot be made a subject matter of legislation. Right to fair trial is the basic premise of all procedural laws. The very prescription

of procedure and the evolution of procedural law have to be understood in the historical context of the anxiety to substitute rule of men by the rule of law. In law any statement or confession made to a police officer is not admissible. Right to silence is mainly concerned about confession. Breaking of silence by the accused can be before a magistrate but should be voluntary and without any duress or inducement.

## **2) Right To Know The Grounds of Arrest**

Firstly, according to Section 50(1) Cr.P.C. “every police officer or another person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.”

Secondly, when a subordinate officer is deputed by a senior police officer to arrest a person under Section 55 Cr.P.C., such subordinate officer shall, before making the arrest, notify to the person to be arrested the substance of the written order given by the senior police officer specifying the offence or other cause for which the arrest is to be made. Non-compliance with this provision will render the arrest illegal.

Thirdly, in case of arrest to be made under a warrant, Section 75 Cr.P.C. provides that “the police officer or another person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and if so required, shall show him the warrant.” If, the substance of the warrant, is not notified, the arrest would be unlawful.

## **3) Information Regarding The Right To Be Released On Bail**

Section 50(2) Cr.P.C. provides that “where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released in bail that he may arrange for sureties on his.” This will certainly be of help to persons who may not know about their rights to be released on bail in case of bailable offences. As a consequence, this provision may in some small measures, improve the relations of the people with the police and reduce discontent against them.

## **4) Right To Be Taken Before A Magistrate Without Delay**

Person arrested to be taken before Magistrate or officer in charge of police station- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

Person arrested to be brought before Court without delay- The police officer or another person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without

unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Provided that such delay shall not, in any case, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court

## **5) Rights at Trial**

### **a. Right To A Fair Trial-**

The Constitution under Article 14 guarantees the right to equality before the law. The Code of Criminal Procedure also provides that for a trial to be fair, it must be an open court trial. This provision is designed to ensure that convictions are not obtained in secret. In some exceptional cases; the trial may be held in camera. Every accused is entitled to be informed by the Court before taking the evidence that he is entitled to have his case tried by another court and if the accused subsequently moves such application for transfer of his case to another court the same must be transferred. However, the accused has no right to select or determine by which other Court the case is to be tried.

### **b. Right To A Speedy Trial-**

The Constitution provides an accused the right to a speedy trial. Although this right is did not explicitly state in the constitution it has been interpreted by the Hon'ble Supreme Court of India in the judgment of Hussainara Khatoon. This judgment mandates that an investigation in trial should be held "as expeditiously as possible". In all summons trials (cases where the maximum punishment is two years imprisonment) once the accused has been arrested, the investigation for the trial must be completed within six months or stopped on order of the Magistrate, unless the Magistrate receives and accepts, with his reasons in writing, that there is cause to extend the investigation

## **6) Right To Consult A Legal Practitioner**

Article 22(1) of the Constitution provides that no person who is arrested shall be denied the right to consult a legal practitioner of his choice. Further, as has been held by the Supreme Court that state is under a constitutional mandate (implicit in article 21) to provide free legal aid to an indigent accused person, and the constitutional obligation to provide free legal aid does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when remanded from time to time. It has been held by the Supreme Court that non-compliance with this requirement and failure to inform the accused of this right would vitiate the trial. Section 50(3) also provides that any person



against whom proceedings are instituted under the code may of right be defended by a pleader of his choice. The right of an arrested person to consult his lawyer begins from the moment of his arrest. The consultation with the lawyer may be in the presence of police officer but not within his hearing.

### **7) Rights Of Free Legal Aid**

In *Khatri(II) v. the State of Bihar*, the Supreme Court has held that the state is under a constitutional mandate (implicit in Article 21) to provide free legal aid to an indigent accused person, and the constitutional obligation to provide free legal aid does not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate, as also when remanded from time to time. However this constitutional right of an indigent accused to get free legal aid may prove to be illusory unless he is promptly and duly informed about it by the Court when he is produced before it. The Supreme Court has therefore cast a duty on all magistrates and courts to inform the indigent accused about his right to get free legal aid. The apex court has gone a step further in *Suk Das v. Union Territory of Arunachal Pradesh*, wherein it has been categorically laid down that this constitutional right cannot be denied if the accused failed to apply for it. It is clear that unless refused, failure to provide free legal aid to an indigent accused would vitiate the trial entailing setting aside of the conviction and sentence.

### **8) Right To Be Examined By A Medical Practitioner**

Section 54 now renumbered as Section 54(1) provides:

54. Examination of arrested person by medical practitioner at the request of the arrested person

When a person who is arrested, whether on a charge or otherwise, alleges, at the time when he is produced before a Magistrate or at any time during the period of his detention in Custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body, the Magistrate shall if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the Magistrate considers that the request is made for the purpose of vexation or delay or for defeating the ends of justice.

### **9) Right Of The Accused To Produce An Evidence**

The accused even has right to produce witness in his defence in case of police report or private defence. After the Examination and cross examination of all prosecution witness i.e. after the

completion of the prosecution case the accused shall be called upon to enter upon his defence and any written statement put in shall be filled with the record. He may even call further for cross examination. The judge shall go on recording the evidence of prosecution witness till the prosecution closes its evidence.

### III. POSITION OF UNDER-TRIALS

#### (A.)Position of under-trials in foreign countries

**Table 3.1**

#### **Under-trials in Foreign Countries**

<b>FOREIGN COUNTRIES</b>	<b>PERCENTAGE OF UNDER-TRIALS</b>
JAPAN	11.0% (MID 2015)
TURKEY	14.1 % (01-04-2016)
U.K ENGLAND AND WALES	10.9% (30-06-2016)
SPAIN	12.8% (26-8-2016)
USA	20% (2013)
CANADA	34% (31-03-2016)
FRANCE	28.07%(01-07-2016)
AUSTRALIA	27.04%(30-06-2015)
RUSSIAN FEDERATION	17.08%(01-08-2016)

*Source; World Prison brief[7]*

#### (B.)Position of under-trials in indian jails

Under-trials occupy rate in the Prison is considerable higher than that of convicted Prisoners. Such a high presence of under-trials Prisoners and their continued and varying period of stay mainly determine the overcrowding of Prisoners in various jail in the states /U.T.s. The strength of Prisoners in jail for the year of 2011-15 is as follows, which shows that under-trials Prisoners are more than convicted

#### **Total number of Under-trials/Convicts as of 31.12.2011[8]**

	Male	Female	Total
Convicts	1,23,633 (96.1%)	4,959 (3.9%)	1,28,592 (34.5%)
<b>Undertrials</b>	<b>1,23,633 (96.1%)</b>	<b>4,959 (3.9%)</b>	<b>2,41,200 (64.7%)</b>
Detenues :	2,363 (96.4%)	87 (3.6%)	2,450 (0.7%)
Others	640 (93.6%)	44 (6.4%)	684 (0.2%)

**Table 3.2 Percentage of convicted and under-trials (2011-2015)**

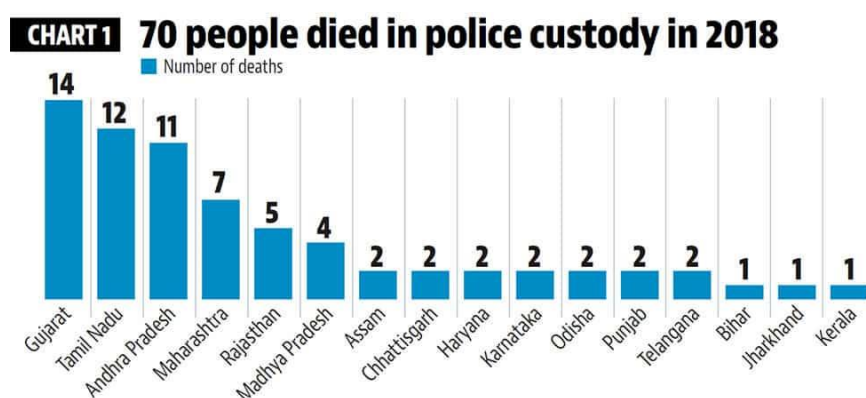
Year	Percentage of Convicts	Percentage of Under-trials
2011	34.5%	64.7%
2012	33.2%	66.2%
2013	31.5%	67.6%
2014	31.4%	67.6%
2015	32%	67.2%

**Source; National Crime Record Bureau Report 2016**

### Deaths in judicial custody

No state police personnel has been convicted for any reported deaths in Custody in 2017.

Out of the 56 registered cases of human rights violations by the police in 2017, only half of the cases (29) get charge-sheeted, only half of those get investigated to completion (14), and only a fifth of those have gotten convictions (3). The probability of a registered case amounting to a conviction was, thus, 1 in 18.



As many as 100 people were reported to have died in police Custody in 2017, according to National Crime Records Bureau (NCRB) data. Of these, 58 people were not on remand--they had been arrested and not yet produced before a court--while 42 were on police or judicial remand.

In 62 cases pertaining to custodial deaths, 33 policepersons were arrested, 27 were charge-sheeted, four were acquitted or discharged, and none were convicted.

“One hundred custodial deaths in one year, in my view, point to serious cause for concern. It indicates that conditions in Custody are not conducive to keeping people safe and alive,” Devika Prasad, programme head, police reforms at the Commonwealth Human Rights Initiative, a non-profit, told IndiaSpend. “The police must be made to answer for someone turning up dead while in their custody.”

Publication of the data is no deterrent to such actions, as news reports of several custodial deaths followed the NCRB data released on October 21.

On October 27, 2019, a 26-year-old youth, Vijay Singh, died in police Custody at Mumbai’s Wadala Truck Terminal police station, following which five policepersons were suspended, The Times of India reported on October 30, 2019.

Singh was taken into Custody after a complaint by a couple, who had accused Singh of harassing them by pointing his bike’s headlights at them while they were seated together. The youth’s family and friends have alleged that he was whipped and denied medical aid despite complaining of chest pain.

#### **IV. REMEDIES AND SOLUTIONS TO CUSTODIAL DEATHS**

We need not look far. All that needs to be done is to compile the recommendations and suggestions given by the various expert groups and institutions and start implementing them. Following are some of the major recommendations given till dates –

- a. Undertrial prisoners should be lodged in separate institutions away from convicted prisoners. There should be proper and scientific classification even among undertrial prisoners to ensure that contamination of first time and petty offenders into full-fledged and hardcore criminals.
- b. Under no circumstance should they be put under the charge of convicted prisoners.
- c. Institutions meant for lodging undertrial prisoners should be as close to the courts as possible.

- d. Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused undertrial prisoners, should be strictly followed both the police and courts.
- e. Automatic extension of remands has to stop which are also given merely for the sake of the convenience of the authorities. Mere convenience of the authorities cannot supersede the Constitutional guarantees under Article 21.
- f. All undertrial prisoners should be effectively produced before the presiding magistrates on the dates of hearing.
- g. The possibility of producing prisoners at various stages of investigation and trial, in shifts should be explored.
- h. Video conferencing between jails and courts should be encouraged and tried in all states beginning with the big Central jails and then expanding to District and Sub jails.
- i. The District Magistrate should constitute a committee consisting of representatives from the local police, judiciary, prosecution, district administration and the prison department at a fairly high level, to visit the Sub jails under their jurisdiction at least once every month and review delay in cases of prisoners if any and adopt suitable measures.
- j. Police functions should be separated into investigation and law, and order duties and sufficient strength be provided to complete investigations on time and avoid delays.
- k. The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial. In appropriate cases jurisdiction of the High Court under Section 482 of the CrPC and Articles 226 and 227 of the Constitution of India can be invoked seeking appropriate relief or suitable directions to deal with and prevent delay in cases.
- l. With undertrial prisoners, adjournments should not be granted unless absolutely necessary.
- m. Order of Dr A.S. Anand – former Chief Justice of India on holding Special Courts Jails for prisoners involved in petty offences and willing to confess, should be actively taken up by the High Courts and implemented in all districts.
- n. There should be a progressive and massive Decriminalization of offences so that many of the wrongs, which are now given the status of crimes, are dealt with as compoundable tortuous wrongs remediable with a claim for compensation.

- o. The class of Compoundable offences under the IPC and other laws should be widened.
- p. Alternatives to imprisonment should be tried out and incorporated in the IPC.
- q. Remand orders should be self-limiting and indicate the date on which the undertrial prisoners would be automatically entitled to apply for bail.
- r. Computerise the handling of criminal cases and with the help of the National Informatics Centre, develop programmes that would help in managing pendency and delay of different types of cases. The High Courts should take an active interest in helping subordinate courts to speed up cases.
- s. There should be an immediate increase in the number of judges and magistrates in some reasonable proportion to the general population. It should be at least 107 judges per million of the Indian population.
- t. In case of violation of any fundamental right of the prisoner then the state should give adequate compensation to the victim

## **V. CONCLUSION**

In any democratic society, work in a prison is public service. Prisons are places like schools and hospitals which should be run by civil Power with object of contributing to the public good. Jails are the critical part of any justice system and as a public sector responsibility, most states require operating jails or housing their prisoners in other local government facilities.

Custodial crimes infringe upon human rights and the confession so extracted often fails to stand the legal scrutiny. Violence of any kind at the hands of police or any governmental or non-governmental agencies is counterproductive. It can turn innocent suspects or prisoners into hardcore criminals. The grudges they have against any particular official sometimes motivate them to rebel against the whole country and its citizens. Therefore custodial management is very important to overall jail management program so that the authorities are able to accomplish the mission despite various challenges.

The government must re-educate the police out of their sadistic arts and inculcate respect for the human being, a process which must begin more by example than by exhortations. If any policeman or for that matter any other officer of any other agency of the government is found to have misconducted; the authorities should not hide the crime under the pretext of police solidarity or brotherhood.

Custodial violence is amongst the worst crimes in any civilized society. It is a blatant violation of human dignity—it strikes at the very roots of the rule and law. Custodial violence and abuse

of power is not only peculiar to India but it is also widespread. It has been the concern of the international community as the problem is not a regional problem but is universal and the challenge is almost global. Third degree torture and custodial deaths, rape, molestation etc. have become an intrinsic part of police investigations and the injury inflicted on the inmates is sometimes unbearable.

The essence of custodial management comes down to three key objectives:

1. Protecting the safety of the inmates, jail personnel and visitors
2. Preventing property damage and loss
3. Preserving inmate rights.

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