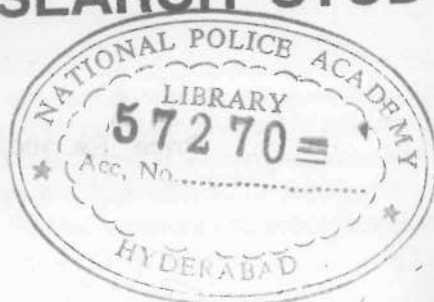


# CUSTODIAL DEATHS IN INDIA

## A RESEARCH STUDY



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IN  
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A RESEARCH STUDY

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## PREFACE

*Incidents of police torture often hit the headlines and expose police to severe public criticism. Unfortunately, reports of police violence and brutality received from various parts of the country convey an impression that the police forces in our country are full of blood-thirsty maniacs who relish the sight of broken skulls and blinded eyes. This impression is misleading. The majority of police officers and men possess a certain degree of commitment and motivation which enable them to stand the stress and strain of their difficult job. Of course, there are some who do indulge in torture and brutalities.*

*Despite elaborate legal provisions and detailed instructions in the State police manuals prohibiting abuse of powers, many a police officer develops a feeling that he can get away with custodial violence because it will be difficult to substantiate such a charge. He also feels that his superiors and subordinates will rally round him and try to whitewash his misdeeds.*

*Custodial deaths thus generate more heat than light. The National Police Commission (1977) analyzed complaints of police torture and custodial deaths in eight States and found that the police were blamed in 11 out of 17 judicial inquiries, 37 out of 82 magisterial inquiries and 23 out of 430 inquiries by other agencies. The National Police Commission recommended that in all cases of custodial deaths there should be mandatory judicial inquiries. It is also a fact that victims of custodial violence mostly are people coming from poor and backward sections with little political influence or financial power to back them.*

*In this research study an attempt has been made to analyse the problem from various angles. Opinions of senior officers of police, Cutting edge level Police Officers, IAS officers, Doctors, Judicial Officers, Lawyers, Academicians, etc., on the issue have been elicited. The perceptions vary, but the framework of recommendations derived from the responses are exhaustive and pragmatic.*

We are thankful to Dr. Padma Veni, Research Assistant for meticulous compilation of data and application of statistical treatment. We thank also Shri Ashok, Artist of the Academy for designing the cover elegantly. Shri K.B. Ramchandani and his library staff provided reference materials for research report. Shri K. Krishna Hari and Shri K. Sannayya Pantulu have typed the manuscripts of the book several times before it came in its present form. We appreciate their painstaking endeavours.

Last, but not least, our thanks go to the respondents and the eminent scholars in this particular field whose studies have been quoted in the research report.

## — AUTHORS

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# CHAPTER - I

## CUSTODIAL DEATHS : PROBLEMS AND PERSPECTIVES

### 1.1. INTRODUCTION

The occurrence of Custodial deaths in the world's greatest democracy has raised eyebrows of every citizen and shaken the very faith in democracy. The international pressure for the observance of Human Rights is mounting.

Jerome H. Skolnick<sup>1</sup> rightly posed some basic questions before Police for preservation of democratic order and the rule of law. "For what social purpose do Police exist? What values do the Police preserve in a democratic society? Are the Police to be principally an agency of social control with their chief value the efficient enforcement of the prohibitive norms of substantive criminal law? Or the Police to be an institution falling under the hegemony of legal system, with the basic commitment to rule of law, even if this obligation may result in a reduction of social order? How does this dilemma of democratic society hamper the capacity of the Police, institutionally and individually to respond to legal standard of law enforcement?"

The Law Commission has also very pertinently observed that the weak and the poor are the worst sufferers of custodial crimes!

In 1980, Arun Shourie<sup>2</sup> investigated 45 deaths in police custody in seven states. He found, "---- the patterns are uniform from one death to another, from one State to another, that generalisations are possible. The victims were invariably poor. Several of them were hauled in on no formal charges at all. Even in the case of persons who were arrested, in an overwhelmingly large number of cases they are all accused of petty offences." In

1. Skolnick Jerome H "Justice without trial: Law enforcement in a democratic Society".
2. Arun Shourie 1980 quoted in K.G.Kannabiram "Creeping Decay in Institutions of Democracy." The Economic and Political Weekly, August-1992

some cases investigated by him, he observed that the bodies were so badly mauled that it was not possible to hide the crime committed. The explanation for these deaths were, 'snake bite', heart failure on the way to the hospital, 'sudden illness', etc. Some were said to have died of mysterious reasons, while the rest committed suicide. The accounts of suicide given have not varied even now - by hanging inside the lock-up by using a 'lungi' or a belt, jumping out of a building or in front of a bus; or some such ludicrous and unbelievable account.

The agonizing question is whether these persons must continue to die simply because the police take 'advantage' of the laws?"

( Brandeis of American Supreme Court in *Olmstead V. US* <sup>3</sup> has very rightly remarked; "The Police reflect the State and the state the society. If the government becomes a law breaker, it breeds contempt for the law; it invites every man to become law unto himself, it invites anarchy") Thus, in democratic societies the police are charged with enforcing the criminal law and a host of regulatory laws designed to make society orderly and safe. To achieve these ends, the police have been vested with authority and powers not available to ordinary citizens. In fact, the police are the only civilian occupation provided with the legal and physical means to enforce the law, including the use of state sanctioned force, when and if necessary. The power of the police is unrivaled in civil society and it is because of this the democracies place great emphasis on overseeing and controlling police action."

✓ The figures of deaths in police custody in the years 1985 to 1991 as reported by the Amnesty International Report (1992)<sup>4</sup> were as under:

State	No. of Custodial Deaths
Andhra Pradesh	31
Assam	22
Bihar	49
Jammu & Kashmir	23

3. 277, US 438.

4. Report of Amnesty International P. 102-193, 1992.



Haryana	4
Karnataka	6
Kerala	12
Madhya Pradesh	20
Maharashtra	21
Manipur	19
Orissa	6
Punjab	23
Rajasthan	6
Sikkim	1
Tamilnadu & Pondicherry	19
Uttar Pradesh	25
West Bengal	43
Delhi	37

---

Amnesty International Report (1992)<sup>5</sup> has also quoted 415 cases of custodial deaths. Thus, Police custodial deaths shake our faith in democracy.

In his address to the Heads of Police of various States and Central Police Organisations in 1993, the Prime Minister<sup>6</sup> expressed concern on Custodial deaths and called upon the policemen to prevent them. Shri Rajesh Pilot, Minister of State (Home) also spoke on the occasion and underlined the need for accountability on the part of police. He opined that the working of police should be transparent which would make it an effective force that can enlist local assistance.

Saksena (1993)<sup>7</sup> very sharply reacted to the deteriorating state of Human Rights observance in our country. He articulated "... no one disputes that custodial deaths are a blot on the image of the Indian Police. These can be eliminated under a more efficient police leadership, which no government seems to want. If each police officer's transfer in the last three months in UP, Madhya Pradesh and Rajasthan is analyzed, it would appear that the worst

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5. Amnesty International and India, 1992

6. "Prime Minister concern over Custodial deaths," *The Statesman* 15th May, 1993.

7. Saksena N.S. 1993 "Custodial deaths", *The Telegraph* 15th Oct. 1993.

police officers are the darlings of the administration and their only objective is to get police help in the elections."

Singh (1993)<sup>8</sup> while addressing the academics at Shri Venkateswara University, Tirupati mentioned that in the report on Custodial deaths submitted by the Law Commission of India, it has been recommended that a legislation to check custodial deaths and crime was of utmost importance because in its absence, the rich and the influential were getting away while poor were becoming victims.

Sahay (1993)<sup>9</sup> in his article on Custodial Crimes has reported that the criminal - politician - corrupt bureaucrat nexus had two kinds of law in practice. One for the rich and the powerful who are considered above the law and another for the rest.

114-A In spite of the evidence in the Shah Commission report, and the regular reports in the newspapers on custodial violence and rape, neither the Law Commission nor the government thought it fit to provide statutory measures to punish erring policemen. It was the judgment of the Supreme Court in 1985 which goaded the Law Commission into action and suggested the introduction of Section 114-B in the Evidence Act. The Law Commission made neither reference to the Human Rights Covenant nor UN Declaration against torture which our country ratified by filing a unilateral declaration against torture in 1979. Nor did it suggest a comprehensive code to contain the homicidal habits of the police force.

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8. Singh K.M. 1993 Report on Custodial deaths for Parliament - The Hindu, 25th Sept. 1993.

9. Sahay (1993) Report on Custodial crimes. The Hindustan Times, 8th Oct. 1993.

## 1.2. REVIEW OF THE RESEARCH STUDIES

The Andhra Pradesh Civil Liberties Committee has been maintaining a record of all custodial deaths and wherever possible has been participating in the enquiries. Kannabiran<sup>10</sup> (1992) has reported on the victims of custodial deaths and number of lock-up deaths in Andhra Pradesh during 1984-90. The data is presented in tables 2 & 3:-

**TABLE 2**

### **LOCK-UP DEATHS IN ANDHRA PRADESH**

Year	No. of Deaths
1984	16
1985	22
1986	19
1987	24
1988	18
1989	10
1990	12

**TABLE 3**

### **VICTIMS OF CUSTODIAL DEATH**

Occupation	Per cent
Labour	27
Peasants	18
Business	15
Employees	11
Political activites	7
Not known criminals	8

10. Kannabiran K.G. "Creeping Decay In Institutions of Democracy".  
The Economic and Political Weekly, Aug. 1992.

He further reported, "... in 31 cases judicial enquiry has been ordered. The result of the judicial enquiry is of no consequence. What should be shocking is where murders are committed by the members of the police force, they are being enquired into by Executive Magistrates under Section 176 or by a Commission of Enquiry which puts this class of public servants above law. This unconstitutional practice is by repetition legitimized by the state. The Commission of Enquiry Act is not intended to be a substitute for criminal prosecution. The government is obviously afraid of subjecting the police to the ordinary legal processes because they may refuse to carry out illegal orders. Work to rule by the police force might mean enforcement of the constitutional guarantees and that may threaten the longevity of the government."

Vadackumchery<sup>11</sup> (1994) presented a paper on "Custodial violence and death" at the symposium organized by the Indian Society of Victimology in Madras. Opinions were collected from 254 Police Officers. Four thousand two hundred and forty six people were also selected from all walks of life to give their responses on use of torture in Police Custody. Few accused persons were also interviewed. Following were the main findings:

- 78.32 % Police officers admitted that the arrested were kept in custody till a confession was obtained from them.
- 63.64 % people from all walks of life were of the view that investigating officers extort confession from the arrested even by unfair means.
- 81.5 % Police officers admitted that third degree methods were used during interrogation.
- 38.82 % accused persons reported that the police took them into custody by 'informal' arrest.
- 36.18 % accused persons reported that they were kept in custody for more than 24 hours.
- 81.91 % of the accused were produced only after confession of their guilt to the police.

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11. **Vadackumchery J (1994) "Custodial Violence and Death : Problems and Prevention," Paper presented in the Symposium of Indian Society of Victimology, Madras.**

- he study also revealed that the investigating officers employed practically all the methods and techniques to make the suspects plead guilty such as frightening, threatening, physically and mentally torturing while detaining them to obtain a confession.
- 86.67 % members of the general public reported that third degree methods were being used by police only against criminals and suspects in crime.

In a study by BPR & D (1993)<sup>12</sup> on Custodial Crimes, following causative factors were identified for occurrence of custodial deaths in our country:

Sadism in Police.

Unrealistic public expectations about crime control.

Failure of Criminal Justice System.

Inadequacy of strength and resources in police.

Inadequacy of laws.

Lack of scientific temper and non-availability of facilities.

Following remedial measures were also suggested in the report :

- Tightening recruitment standards.
- Improving training standards .
- Improving the machinery for enquiring into complaints.
- Improving supervisory and leadership standards.
- Review and implementation of reports submitted by commissions/committees.
- Review of laws.
- Payment of compensation.

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12. "Custodial Crimes - Ways and Means to Meet The Malady"  
BPR&D, GOI, 1993.

*Legal provisions*

In 1992, Calcutta High Court<sup>13</sup> recommended the use of Custody Memo to monitor, check and prevent custodial violence. Justice Basu asserted, "When a person is taken into police custody by warrant of arrest or is taken into police station or at any other place for interrogation, the police officer concerned shall serve and provide "Custody Memo" in duplicate to the person's spouse, guardians, relatives or any persons available at the residence. The memo should indicate the date, time and place of arrest or place from where taken into custody, cause of arrest or custody, reference of police, case and offence committed, if any, reference of provisions or statute, mark of injury in the body if any, name and designation of custody or investigating officer, name of the police station in charge or place of detention, name and designation of the officers apprehending the suspect and/or taking the suspect into police custody, registration number of the vehicle (if used), forum or court where the arrested is to be produced and date and time of production before court.

The Royal Commission into Aboriginal Deaths in Custody Australia (1991)<sup>14</sup> made numerous recommendations designed to improve custodial health and safety, specifically in police and prison custody.

It recommended that juvenile welfare/justice services should examine the delivery of medical services to all detained young people. Some of the elements that such an examination should include are the following:

- a. The establishment of regular medical or nursing presence in all detention facilities;
- b. The establishment of locally based protocols between juvenile detention, medical and para-medical agencies to facilitate the provision of medical assistance to detainees where the need arises;

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13. "COURT DIRECTIVE TO CHECK CUSTODIAL VIOLENCE"  
The Hindu,  
8th July, 1992.

14. Royal Commission into Aboriginal Deaths in custody 1991.  
National Report Version and Recommendations. Australian  
Government Publishing Service, Canberra, pp.57-69

c. The establishment of protocols for the care and management of juvenile detainees at risk, with attention given to the specific action to be taken by custodial staff with respect to the management of such detainees as :

- i. those who are affected by alcohol or other drugs;
- ii. those who are known to suffer from illness, such as epilepsy, diabetes, asthma, heart disease or other medical conditions;
- iii. those who make any attempt to harm themselves or who exhibit a tendency to violent, irrational or potentially self-injurious behaviour;
- iv. those with an impaired state of consciousness;
- v. those who are angry, aggressive or otherwise disturbed;
- vi. those suffering from mental illness; and
- vii. those in possession of, or requiring access to, medication,  
(Adapted from Recommendations 127 & 152).

The protocols established as a result of such a review of medical services for detained young people should be readily available to the public.

It was further recommended that juvenile welfare/justice service:-

(a) establish clear policies in relation to breaches of departmental instructions. Instructions relating to the care of persons in custody should be in mandatory terms and be both enforceable and enforced. Procedures should be put in place to ensure that such instructions are brought to the attention of and are understood by all officers and that those officers are made aware that the instructions will be enforced. Such instructions should be available to the public. (recommendation 123)

(b) establish procedures for the conduct of de-briefing sessions following incidents of importance such as deaths, medical emergencies or actual or attempted suicides so that the operation of procedures, the actions of those involved and the application of instructions to specific situations can be discussed and assessed with a view to reducing risks in future (recommendation 124).

(c) while recognising the importance of preserving the scene of a death in custody for forensic examination, the first priority for officers finding a person, apparently dead, should be to attempt resuscitation and to seek medical assistance. (recommendation 158)

All detention facilities should have resuscitation equipment of the safest and most effective type readily available in the event of an emergency and staff who are trained in the use of such equipment. (recommendation 159)

It further recommended that :

a. All detention facility staff should receive basic training at recruit level in resuscitative measures, including mouth to mouth and cardiac massage, and should be trained to know when it is appropriate to attempt resuscitation; and

b. Annual refresher courses in first-aid be provided to all who routinely have the care of persons in custody. (recommendation 160)

The report also puts forward an effective recommendation -

"It is a fundamental aspect of legal imprisonment that a prisoner be properly searched and deprived of all potentially dangerous items in order to obviate the possibility of injury or escape"

Gisli Gudjonsson et al (1993) have conducted a study in U.K. entitled "Persons at Risk During Interviews in Police Custody: The Identification of Vulnerabilities". The aim of this study was to assess suspects psychologically at police stations prior to their being interviewed by the police in order to monitor their (1) current mental state; (2) intellectual functioning; (3) reading ability; (4) interrogative suggestibility; (5) anxiety proneness; and (6) understanding of their legal rights. It was hoped that the data obtained about the suspects psychological characteristics would provide valuable information about the type and extent of potential vulnerabilities exhibited by suspects' detained for interviewing at police stations. Another aim was to explore how readily suspects'



intellectual deficits could be determined by superficial observation prior to intelligence testing. Their hypothesis was that many intellectually disadvantaged suspects (i.e. those with I.Q. scores below 70) possess handicaps which are not readily detected without formal testing even by experienced clinicians. This hypothesis was consistent with the findings of Gudjonsson in numerous criminal cases. The importance of the proper identification by police officers of psychological vulnerabilities, such as mental handicap and mental illness, was emphasised in their Codes of Practice of the Police and Criminal Evidence Act (Home Office, 1985 of U.K.). The revised Code contains important special provisions for the detention and interviewing of special groups such as persons whose proficiency in the English language is limited, deaf people, juveniles, and persons who are mentally handicapped or mentally disordered. The principal legal provision for these people was that they must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult (Home Office, 1991).

### 1.3. A POSITIVE STEP

It is heartening to note that the Government of India has established a National Commission on Human Rights. It is a very positive step to check the violation of Human Rights. Relevant objectives of the Commission's Provisions which have bearing on Custodial deaths are as under:-

i) To study, investigate and review all matters relating to the safeguards provided under the Constitution and the Laws for protection and promotion of Human Rights of all sections of the Society, and make recommendations on the steps necessary for effective implementation of the safeguards provided for this purpose;

ii) To study and review existing constitutional and legislative provisions relating to the preservation and promotion of Human Rights, and recommend amendments thereto so as to overcome any lacunae, inadequacies or shortcomings in such legislation;

iii) To recommend enactment of new laws, as may be considered necessary by the commission, to further strengthen the legal framework for protection and preservation of human rights of all sections of society;

iv) To look, suo-motu or on complaint, into matters relating to deprivation, of human rights; non-implementation of Laws enacted to provide protection and prevention of violation of Human Rights; and non-compliance of policy decisions, guidelines, or instructions issued to ensure the protection of human rights of the citizens;

v) To inquire, suo-motu or on complaint by the victim, or anyone else on his behalf, into specific complaints of violations of the civil and political rights, abetment thereof, or negligence in performance of duties connected therewith;

vi) To study and make recommendations in respect of the system of criminal administration and prison reforms etc., which may be relevant in the context of prevention of violation of human rights.

### 1.3. A POSITIVE STEP

It is pleasing to note that the Government of India has established a National Commission on Human Rights. It is a very positive step to check the violation of Human Rights. Relevant objectives of the Commission's functions which have bearing on

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legislation...

## CHAPTER 2

### **LAW AND CUSTODIAL DEATHS IN INDIA \***

The Constitution and the laws of India are imbued with abiding concern for human rights and fundamental freedom in general and the rights of the accused and even the convict in particular. Dignity of human beings and the well-being of all mankind have always been a part and parcel of the cultural milieu of our ancient Indian civilisation. Cruel, barbaric and inhuman punishments were totally alien to our culture. It is important to recognise that human rights culture cannot be imposed; it has to grow and develop from the cultural roots of the soil.

#### **2.1 FUNDAMENTAL PRINCIPLES OF CRIMINAL JURISPRUDENCE:**

Though it is nowhere expressly provided for either in our statutes or the Constitution, the following principles have for a century been considered as fundamental to our criminal jurisprudence:-

1. The accused shall be presumed to be innocent till his guilt is proved in a court of law.<sup>1</sup>

2. The burden of proof is on the prosecution to prove the guilt of the accused and not on the accused to prove his innocence.<sup>2</sup>

3. The prosecution must prove its case "beyond all reasonable doubt".

4. If, there is any doubt regarding prosecution case, the benefit of doubt must go to the accused and he must be acquitted.

---

\* Prof. V. Nageshwara Rao of Dept. of Law of Osmania University has contributed this Chapter

1. This presumption of innocence is enshrined in Article 11 of Universal Declaration of Human Rights, 1948.
2. The principle was laid down in the famous English case Woomington Vs. Director of Public Prosecution, 1935 A.C. 462 and followed by the Indian Courts.

5. While the onus of proving any general or special exception in his favour is on the accused, he has to satisfy the test of preponderance of probabilities only and not the rigorous test of proof beyond all reasonable doubt.

6. Let nine criminals go unpunished, but let not one innocent person suffer.

## 2.2. THE ACCUSED AND THE CONSTITUTION

The Magna Carta, the Petition of Rights, the Bill of Rights and the Universal Declaration of Human Rights, 1948 have been the Pole Stars which have chartered the course of drafting of the Indian Constitution and various laws. Our Constitution confers some important fundamental rights like right to equal protection of laws (Art.14), right to life and personal liberty (Art.21) and right against testimonial compulsion (Art.20 (3)) not only on the Indian citizens but also on aliens. With a humane and liberal outlook, the Supreme Court brought many other significant rights under the sub-rule of the above fundamental rights. In Maneka Gandhi case, (Supreme Court held that Article 21 requires not only the 'Law' but also the procedure laid down by the law should be "fair, just and reasonable.") In various land-mark judgments the Supreme Court and the various High Courts have held against solitary confinement<sup>4</sup>, chaining the accused<sup>5</sup>, inhuman treatment and torture<sup>6</sup>, infliction of death sentence except in rarest of the rare cases<sup>7</sup>, inordinate delay in the execution of death sentence<sup>8</sup>, domiciliary visits and invasion of privacy<sup>9</sup>, and generally 'pachydermic' prison justice. Justice Krishna Iyer declared that "fundamental rights do not stop at the prison gates." Right to speedy trial has been read into<sup>10</sup> Article 21 by the Supreme Court. The Supreme Court has

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3. Maneka Gandhi V. Union of India, AIR 1978 S.C. 597

4. Sunil Batra V. Delhi Administration, AIR 1978 S.C. 1575

5. Charles Shobhraj Case

6. Sunil Batra case (No.2) AIR 198 S.C. 1579

7. Bachan Singh V. State of Punjab, AIR 1980 S.C. 898 .

8. Triveni Ben V. State of Gujarat, AIR 1989 S.C. 142

9. Kharak Singh V. State of U.P. AIR 1963 SC 1295; But see Govind V. State of M.P., AIR 1981 SC 1379

10. State of Maharashtra V. Champalal, AIR 1981 SC 1673

even struck down S.303 <sup>11</sup> and S.309 <sup>12</sup> of IPC as violative of fundamental rights of the accused.

### 2.3 THE LEGAL THEORY AND THE STARK REALITY:

As against the above background of human rights, jurisprudence of the Constitution and the laws, and of the Supreme Court and the High Courts, we are often faced with the stark reality of the third degree methods being used by the Indian police for a long time. Coercion, torture and even custodial deaths are not unknown even in independent Republican India.

It is perhaps one of the serious drawbacks of our Constitution that it does not expressly provide for a fundamental right against torture.

In fact, the Indian enactments are replete with instances of legislative suspicion on the integrity and efficiency of the police. During British rule, the so-called Torture commissions were instituted to enquire into illegal and questionable methods used by the police during investigation and interrogation. Even before the present IPC, Cr.P.C. and Evidence Act came into force, the earlier Act of 1861 contained provisions that barred confessions made to police officers in police custody. (SS 148, 149 and 150). SS.330 and 331 of the Indian Penal Code, 1860 make it a punishable offence if hurt or grievous hurt is caused for extorting, inter alia, "any confession or any information which may lead to the detection of an offence or misconduct." Illustrations (a) and (b) to S.330 (Act) refer to 'torture' by police officers for extorting confessions and clearly manifest the great concern of the legislature about the methods used by the police. SS.25 and 26 of the Evidence Act of 1872 bar proof of confessions made to police officers or in police custody irrespective of whether they were voluntary or not. Such confessions are presumed to be coerced. In fact, James Fitzjames Stephen who was the draftsman of the Evidence Act stated that the background of these sections was the inefficiency and third degree methods of the Indian Police. S.162 of the criminal procedure code (of 1898 as amended in 1973) goes a step further and declares that "no statement made by any person to a police officer in the course

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11. **Mithu V. State of Punjab, AIR 1983 SC 473**

12. **Recent and yet unreported judgment of SC**

of an investigation" shall be used "for any purpose" barring a few exceptions.

Commenting on the above provisions, it was observed in Queen Empresses V. Babu Lal <sup>13</sup>:

"... the legislative had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and those malpractices went to the length of positive torture... Instead of working up to the confession, they work down from it."

This legislative slur on policeman's character is peculiar to India and is not found either in U.K. or in U.S.A., Dealing with the argument that "the police in India should be similarly treated", the Law Commission of India observed that those who advanced the argument "seemed to ignore the circumstances which have made the Indian policeman what he is. It must be conceded that in India, the Police force as a whole is not, even today, regarded as a friend of citizens," However, the Law Commission pointed-out that these provisions of the Evidence Act "are not a reflection on individual members of the police force but only a recognition of the imperfections of the system as it prevails today." Stating that the reasons which have led to the laying down of the rules mentioned above are equally valid today", the Commission said that it was "unable to accept the suggestion" that all confessions made to police officers should be made admissible. However, the Commission felt that "the superior officers of the police are today recruited from the same social strata as officers of other departments including even the judiciary" and hence, expressed the view that officers of the status of a Deputy Superintendent of Police and above might be trusted and that confessions made to them can be accepted in evidence. But, the Law Commission added the rider that "this relaxation must necessarily be restricted to cases which such officers themselves investigate" <sup>14</sup>

It is noteworthy that the above suggestion of the Law Commission has not been acted upon so far by the Parliament.

13. (1884) ILR 6 All. 509.

14. See Indian Law Commission's Fourteenth Report on Reform of Judicial Administration, Vol.II, pp.746-748

## 2.4. CUSTODIAL DEATHS:

Police excesses in India resulted not only in third degree methods, but also in custodial rapes and deaths. Custodial rapes have led to a series of amendments to Cr.P.C. and Evidence Act.<sup>15</sup>

The worst form of police excess is, of course, causing death to persons in custody. The Amnesty International, Asia-Watch and our own National Police Commission have all commented adversely on custodial violence and deaths in India. In fact, the police are the custodians of the safety of the prisoners and Rule 48 of Madras Prison Rules framed under the Prisons Act makes the police statutorily responsible for the safe custody of the prisoners while in jail. These rules framed by the appropriate authority are a species of delegated legislation and are deemed to be enacted by the legislature concerned.

Many cases of custodial deaths may not have been seen the light of the day and may have gone unreported and unpunished. The few but growing number of cases in which the erring police officers have been brought to book exhibit the utter callousness of the 'pachydermic' police system in India.

In State of Andhra Pradesh V. Venugopal and others<sup>16</sup> the Supreme Court reversed the order of acquittal of three police officers who indulged in torture on the accused in police custody and sentenced them to 5 years rigorous imprisonment. The apex court observed:

"A serious view cannot be taken of such a barbarous method of dealing with persons suspected of a crime as was committed by these respondents in this case. It is necessary that deterrent sentence should be inflicted for such an offence when established."

In State of Uttar Pradesh V. Ram Sagar Yadav and others<sup>17</sup> one Brij Lal, against whom there was an accusation of trespass,

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15. This was the sequel to the decision in Tukaram and Another V State of Maharashtra, (1979) 2. S.C.C. 143.
  16. (1964) 1 Cri. L.J. 16 (S.C.)
  17. AIR 1985 SC 416

was beaten to death by the police for not having obliged their demands of bribe and for reporting the demand of bribe to the Superintendent of Police. The Supreme Court set aside the order of acquittal passed by the High Court and restored the conviction by the Sessions Judge under S.304 of IPC. The Supreme Court felt that the accused should have been convicted under S.302 (murder) instead of S.304 (culpable homicide not amounting to murder)

Challa Ramakenda Reddy and others V. State of A.P. <sup>18</sup> is a peculiar case of death of a person in police custody caused by miscreants. In this case, the A.P. High Court awarded damages of Rs.1,44,000/- to the dependents of the deceased who was killed in his prison cell by his enemies who broke into the prison and threw bombs into his cell. Repelling the untenable arguments advanced on behalf of the Government of Andhra Pradesh that "the police guards are only responsible for preventing the prisoners from escaping from subjail," The Andhra Pradesh High Court held that under Rule 48 of the Madras prison Rules, the police were responsible for the safety of prisoners.

In the very recent case of Dalip Singh and others V. State of Haryana <sup>19</sup> the S.I., A.S.I., and two constables were sentenced to 5 years R.I. under S.304, part.II for having caused the death of a person who was taken into custody on an accusation of theft of cattle. The deceased died because of multiple internal and external injuries caused by the police.

**2.5 Epilogue** The prudent exercise of power should rest not only in knowing its extent but also its limit. As Rule 3 of the Police Code of conduct lays down, "Our police should recognise and respect the limitations of their powers and functions. They should not usurp the functions of the judiciary and sit in judgment on cases. Nor should they avenge individuals and punish the guilty." When a policeman resorts to the third degree methods of maim and murder, he only degrades himself to the level of an ordinary criminal or even worse, because the policeman who is the custodian of law and the visible manifestation of state authority would then become a law-breaker.

18. AIR 1989 A.P. 235

19. (1993) 2 S.C.J. 542



It is true that democratic institutions require and demand great patience and perseverance. It is also true that the judicial system as it is presently constituted could be dilatory and even frustrating because what ought to morally result in convictions and in legal acquittals. But in our system there are no short-cuts, and if the police lose faith in the system, who else would have it ?

The argument that the police should resort to the third degree methods for doing quick justice is not only untenable but also dangerous. As Lord Shankey observed, "It is not admissible to do a great right but doing a little wrong." But by indulging in torture and murder, the police are not doing a "little wrong" either. As Wickersham Commissioner (USA) pointed out, "Third degree brutalises the police, hardens the prisoner against society, and lowers the esteem in which the administration of justice is held by the public" <sup>20</sup>

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20. National Commission on Law observance and enforcement, report on lawlessness in Law Enforcement (1931) p.5

## **CHAPTER - 3**

### **U.N.O AND AMNESTY INTERNATIONAL ON CUSTODIAL DEATHS AND THEIR PREVENTION**

#### **3.1. CONVENTION ADOPTED BY GENERAL ASSEMBLY OF THE UNITED NATIONS\***

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter, the "Convention") was adopted by the General Assembly of the United Nations with resolution 39/46 of 10 December 1984. It became effective on 27th June, 1987, in accordance with article 27(1). As on June 1990, the Convention had been ratified or acceded to by 52 State.

According to article 2(1) of the Convention, each State party must take effective legislative, administrative, judicial and other measures to prevent any acts of torture, as defined in article 1 of the Convention, from being committed in any territory under its jurisdiction. Paragraphs 2 and 3 of article 2 specify that such acts are not justifiable by exceptional circumstances, nor by order from a superior officer or a public authority. These provisions apply also to other cruel, inhuman or degrading treatment or punishment (throughout this chapter, only the term "torture" will be used).

In addition to this provision, State parties assume a series of obligations contained in articles 3 to 16 of the convention. In particular, State parties must proceed immediately to an impartial investigation when there is reasonable ground to believe that torture has been committed (article 12). Furthermore, any individual who alleges to have been tortured must have the right to complain (article 13); and the victim -- or in the event of the victim's death, his family -- must be ensured fair and adequate compensation (article 14).

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\* For reference see - Voyame Joseph (1991), "The Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment" in Manual on Human Rights Reporting, United Nations pp.177-181

In order to ensure the implementation of these obligations, the convention requires State parties to report periodically on the measures taken to give effect to the rights enshrined in the Convention. This obligation is contained in article 19, which also outlines the procedure for the examination of reports.

### Text of article 19

— The State Parties shall submit to the Committee, through the Secretary General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter, the State Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

— The Secretary general of the United Nations shall transmit the reports to all State Parties.

— Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

— The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

### Text of other Articles

#### Text of Article 1

For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as

obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

### **Text of Article 2**

— Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

— No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

### **Text of Article 3**

— No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

— For the purpose of determining whether there are such grounds, the competent authorities shall take into account all the relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

### **Text of Article 4**

— Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

— Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

## **Text of Article 5**

— Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

- a) When the offences are committed in any territory under its jurisdiction or on board of a ship or aircraft registered in that State;
- b) When the alleged offender is a national of that State;
- c) When the victim is a national of that State if that State considers it appropriate.

— Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite.

— This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

## **Text of Article 6**

— Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such a time as is necessary to enable any criminal or extradition proceedings to be instituted.

— Such State shall immediately make a preliminary inquiry into the facts.

— Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a member nation, or, if he is a stateless person, with the representative of the State where he usually resides.

— When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the State referred to in article 5, paragraph 1, of the fact that such a person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

### **Text of Article 7**

— The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

— These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

— Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

### **Text of Article 8**

— The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between State Parties. State Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

— If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

— State Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

— Such offences shall be treated, for the purpose of extradition between State Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the State required to establish their jurisdiction in accordance with article 5, paragraph 1.

### **Text of article 9**

— State Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any disposal necessary for the proceedings.

— State Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

### **Text of article 10**

— Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

### **Text of Article 11**

— Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in the territory under its jurisdiction, with a view to preventing any cases of torture.

### **Text of article 12**

— Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, where there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

### **Text of Article 13**

— Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

### **Text of Article 14**

— Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to a fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

— Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

### **Text of Article 15**

— Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

### **Text of Article 16**

— Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in article 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.



— The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

### Text of Article 17

— There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the State Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.

— The members of the Committee shall be elected by secret ballot from a list of persons nominated by State Parties. Each State Party may nominate one person from among its nationals. State Parties shall bear in mind the usefulness of nominating persons who are members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

— Elections of the members of the Committee shall be held at biennial meetings of the State Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the State Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of State Parties present and voting.

— The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the State Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the State Parties.

— The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

— If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the State Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

— State Parties shall be responsible for the expenses of the members of the committee while they are in performance of Committee duties.

Although nominated and elected by the State parties, the members of the Committee are in no way representatives or delegates of the State whose nationality they bear. The members of the Committee serve as experts in their personal capacities and as such, they cannot receive instructions from any government. Furthermore, before assuming their responsibilities, each member makes a solemn declaration that he/she will exercise the duties and functions "honorably, faithfully, impartially and conscientiously" (rule 14 of the rules of procedure)

### 3.2. AMNESTY INTERNATIONAL ON VIOLATION OF HUMAN RIGHTS BY POLICE IN INDIA (TORTURE AND CUSTODIAL DEATHS)\*

Amnesty International and Asiawatch have been vociferously clamouring about violation of human rights in India by police and paramilitary forces. The broad head under which the police excesses have been reported are - torture, custodial violence, Custody gang rape, fake encounters, and lack of sanctity of official records. The Amnesty report 1992 describes in detail the pattern and practice of torture, including rape, and deaths in custody in India. A brief summary of relevant portion of the report is presented below:-

#### 3.2.1 TORTURE : PATTERNS AND VICTIMS

Torture is not only frequently reported in India, it has even been depicted in newspapers. Many torture victims were arrested in connection with criminal investigation and tortured to extract information and confessions. Others were arrested because of relative or friend was sought by the police or because false charges were brought against them at the behest of powerful local interest - members of State ruling parties, businessmen or land-owners. Torture is also used as deterrent and in reprisal for attacks by armed groups.

The most common torture methods are severe beatings, sometimes while the victim is hung upside down, and electric shocks. People have also been crushed with heavy rollers, burned, stabbed with sharp instruments, and hot objects such chillies or thick sticks forced into their rectums. Sexual mutilation has been reported. Rape is a common form of torture. In J & K, it is practised as a systematic attempt to humiliate and intimidate local people during counter insurgency operations. Journalists who expose human rights violations have also been detained and ill-treated.

#### 3.2.2. DEATH IN CUSTODY (Gross human rights violation)

There is evidence of a pattern of torture resulting in the victim's death throughout India regardless of which party is in power at the

\* For reference please see Amnesty International Report (1992). *Apf.*  
"India: Torture, Rapes and Deaths in Custody".

Centre or in the States. The true number of deaths in custody each year as a result of torture is believed to be 100 or more. The poor and the underprivileged, often the victims of torture, have little opportunity to obtain publicity or redress. They are often easy targets for police intimidation. Political prisoners and suspected opponents of the government have also died in custody, especially in areas where armed opposition groups are active, including both those seeking independence or increased autonomy and those like the naxalites who call for greater economic and social rights. Some of those who have died in police custody appear to have been innocent of any crime. Often they were detained illegally with no case or charge registered against them.

### 3.2.3. IMPUNITY : CONDONING CUSTODIAL VIOLENCE

Successive Indian governments have consistently failed to ensure that proper investigations - a prerequisite for bringing the perpetrators to justice or obtaining compensation for the victims - are held in case of custodial victims. In India, there is a substantive body of evidence that Government and official agencies have made special efforts to cover-up human rights violations and prevent the police and security forces from being punished.

Only 3 out of 415 cases of custodial deaths which occurred since 1985 in which police officers accused of torturing people to death have been convicted by the courts. Amnesty International believes that it is often direct or indirect pressure from the executive area of Government which prevents prosecution. Suspension in the usual official response in the face of a public outcry when someone is killed in custody. It appears to be a delaying tactic. The police regularly resort to a range of techniques to cover-up instances of custodial violence: Failure to register complaints, acknowledge detention or to apply other legal safeguards; denial or responsibility; falsification of judicial records and post-mortem reports sometimes by having them carried out at police hospitals; intimidation of witnesses and complaints; and influencing police inquiries of having them conducted by Police from the same branch and delaying their outcome and prosecutions. It is not only the police who use these methods; they can often rely on the active

complicity of medical doctors, executive magistrates and other officials who contribute to cover-ups by writing false reports or suppressing evidence of police torture.

In some cases, the police have sought to evade responsibility for deaths in their custody by denying the victims who had been arrested or by refusing to register a complaint. Sometimes the police deliberately fail to record the arrest of persons detained for interrogation, although it is required by law. The police also frequently fail to bring detainees before a magistrate within 24 hours of arrest as the law requires. One reason, clearly, is that this may expose the fact that suspect has been tortured or ill-treated. Several recent cases illustrate that the police distort the facts in First Information Report (F.I.R.)

In a number of cases, the police have attempted to cover up the torture of detainees who died in their custody by providing false information about the circumstances of the death and by denying any responsibility for them. Sometimes they have announced that death were due to suicide or illness, accidents, assaults by others or to injuries sustained when the prisoner tried to escape or resist arrest. Some deaths have been attributed to armed encounters with the police denying that the victims were in custody at the time of death.

In some cases, relatives of deceased prisoners have been put under pressure by the police to sign false statements suggesting that the victims had died from diseases or illness from which they had never suffered. The police have also gone to extraordinary lengths to prevent the truth emerging, including the confiscation and disposal of bodies of alleged torture victims to prevent their exhumation. The relatives of victims of custodial deaths have said that the police tried to bribe them, offering them money to keep quiet. Amnesty International has found evidence of magistrates ignoring their legal duty to act when detainees claim that they have been tortured or appear in court with clear signs of torture. The Resident Doctors' Association (RDA) of the AIIMS, Delhi, has accused the police of "interfering in the professional freedom of doctors of AIIMS".

### 3.2.4. CAUSES OF USE OF TORTURE

✓ The main reason why torture continues to be practised on such a wide scale throughout India is that the police feel themselves to be immune - they are fully aware that they will not be held accountable, even if they kill the victim and even if the truth is revealed. Institutional factors which contribute to the persistence of torture include :- the negative public image and bad working conditions of the police, the inadequate training and facilities available to them, the high degree of political involvement in directing their activities and the failure of government to accept responsibility for ensuring that the police operate within the limits of law.

Concern that inadequate police training contributes to custodial violence is also long-standing, but again recommended improvements have not been implemented. Officials have similarly complained that a total lack of modern investigative techniques contributes to police excesses. The Central Government bears a large measure of responsibility for the misbehavior of the police because of its long-standing failure to ensure that adequate resources are allocated to their training and operation. ✓

### 3.2.5. TWO IMPORTANT OBSERVATIONS

Although a magisterial inquiry is a legal requirement whenever a person dies in the custody of Police, the security forces or prison authorities, such inquiries are often not held. A.I. found that inquiries by a magistrate were held in only 42 of the 415 cases of deaths in custody it has documented since 1985. Successive Indian governments have persistently resisted all attempts to establish the right to monetary compensation for wrongful actions by their agents and officers. They have argued that the state is not liable for the acts of its officers when discharging "Sovereign Functions". The government has argued that victims of police excesses have the opportunity to bring a civil suit for damages or to initiate a criminal complaint. However, civil claims involve such lengthy and costly procedures that very few use them and complaints against the police are rarely successful.

### 3.2.6 THE PREVENTION OF TORTURE AND DEATHS IN CUSTODY

— The Central and State governments issue strict instructions to all relevant officials in Indian states, including lower ranking police officers empowered to arrest and detain suspects, that all arrested individuals are to be brought before a magistrate promptly within 24 hours of arrest, and that no torture or ill-treatment be permitted under any circumstances. Relatives and lawyers should be allowed prompt, regular access to all arrested people, who should be medically examined on arrival at the place of detention before interrogation begins and, if possible, regularly thereafter. Reliably reported abuses should be investigated by an independent body, and if there is prima facie evidence of torture those responsible should always be brought to justice and the victims should always receive prompt and adequate compensation.

— In the case of disadvantaged groups particularly liable to human rights abuses, it should consider establishing local independent procedures and institutions for the handling of alleged abuses - bodies which could take immediate action to halt such abuses. It might also consider carrying out the recommendation of the National Police commission to create special units in police departments to investigate complaints by members of the Scheduled Castes and Tribes, and that these units should indicate areas needing special attention if members of the Scheduled Castes and Tribes are to be protected.

Medical examinations shortly after arrest could help prevent ill-treatment or torture as well as unjustified complaints of such treatment. In some states special units have been set up to protect the interests of members of the Scheduled Castes and Tribes. The 1977 Police commission, in its Third Report, Chapter XXVI, specifically recommended that such disadvantaged groups should have police protection and encouraged the recruitment of members of what it called the "weaker sections" into various levels of the police force. As far as Amnesty International is aware these recommendations still await implementation.

— It should conduct independent, impartial investigations into all recent cases of death in custody alleged to be the result of torture. All such investigations should be conducted by a Judicial

Magistrate - as the Code of Criminal Procedure stipulated - with the magistrate holding an inquest where relatives or lawyers acting for the family of the dead can give evidence. In view of the frequency of complaints from many Indian states that people die in custody as result of police torture, the government might also consider setting up a special independent body to investigate such deaths and advise on measures to prevent torture and ill-treatment leading to the death of detainees in police custody. The findings of the investigation should be published promptly and in full. Police officers found guilty of causing such deaths should, in all cases, be brought to justice, and the victims' relatives should be granted immediate and adequate compensation.

Although magisterial inquiries (inquests) are mandatory in India (under Section 176 of the Code of Criminal Procedure) they are not always held. Moreover such inquests can be conducted by either executives or judicial magistrates. Most inquests are reportedly conducted by the former and their outcome can be influenced by executive considerations. Amnesty International believes that the best way to ensure that investigations are impartial is to have them conducted by an independent authority, such as a Judicial Magistrate.

Criminal prosecution of police officers accused of causing death in custody are rare, as is the granting of compensation to the relatives of people who have been killed in police custody. In Amnesty International's view criminal prosecutions are the important means of demonstrating the human rights abuses by the police and other law enforcement agencies.

### **AMNESTY INTERNATIONAL'S 10-POINT PROGRAMME**

1. Adopt an official policy to protect human rights.
2. Investigate impartially all allegations of torture.
3. Bring the perpetrators to justice.
4. Strengthen safeguards against torture.
5. Inform detainees of their rights.



6. Train the police and security forces to uphold human rights and reform the police.
7. Compensate the victims .
8. Provide torture victims with medical treatment and rehabilitation.
9. Investigate the causes and patterns of torture.
10. Strengthen India's international human rights commitment.

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TABLE - SAMPLE OF STUDY

Sl. No.	Category	No. of respondents
01	Chief Level Police Officers (Sub-Inspector and Inspector of Police)	51
02	Police Officers (SI & below)	24
03	A.S. Officers (10 + years of service)	17
04	Judicial Officers	24
05	Forensic Medical Experts (Doctors)	18
06	Academics (Professors)	24
07	Students (Lawyers)	23
08	Journalists	4
09	General Category	14
TOTAL		209

## CHAPTER 4

### **METHODOLOGICAL DIMENSIONS OF PRESENT STUDY**

Descriptive Survey Methodology was adopted to arrive at some conclusions related to the perceptions of various strata of the Criminal Justice System and the Academics on the following aspects of Custodial deaths in our country -

- (i) Reasons of occurrence of Custodial deaths.
- (ii) Role of Police in controlling the Custodial crime, and
- (iii) Role of media in projecting the problem before the society.

#### **4.1. SAMPLE**

Two hundred and sixty nine randomly selected respondents belonging to below-cited categories in Table - constituted the sample:

**TABLE - SAMPLE OF STUDY**

<b>S.No.</b>	<b>Category</b>	<b>No. of respondents</b>
01.	Cutting Edge Level Police Officers (Sub-Inspectors and Inspectors of Police)	81
02.	Senior Police Officers (SP, DIG & IG Level)	54
03.	I.A.S. Officers (10 + years of service)	17
04.	Judicial Officers	34
05.	Forensic Medicine Experts (Doctors)	18
06.	Academics (Professors/Readers)	24
07.	Students (Criminology)	23
08.	Journalists	4
09.	General Category	14
<b>TOTAL</b>		<b>269</b>

To elicit the opinion of the top echelons of Police (DG Level), the questionnaires were mailed to 70 officers who were either in service or retired.

## **4.2. QUESTIONNAIRES**

Following questionnaires were constructed:

### **1. Opinionnaire on Custodial deaths in Police :**

It is an open-ended questionnaire having four questions related to 'Custodial Deaths' to elicit the views of the top echelons of Police (DG Level). A copy is enclosed (Appendix A) The questions were on -

(i) Identifying the reasons of occurrence of custodial deaths in our country.

(ii) Effects of Custodial deaths on Police image and people's participation in police.

(iii) Comments on the observations of Amnesty International, UN, Asia Watch etc. on Custodial deaths.

(iv) Strategies to control the occurrence of Custodial deaths in our country.

### **2. Questionnaire - A Study on Custodial deaths in**

#### **India:**

The questionnaire was developed in consultation with the panel of experts from the various disciplines. The focus was to elicit the views of respondents on the following aspects of custodial deaths -

(i) Skills of Interrogation .

(ii) Knowledge of legal consequences of occurrence of custodial deaths to the Police.

(iii) Police-politician nexus.

(iv) Provisions of law.

(v) Role of magisterial and judicial enquiries.

(vi) Role of public opinion .

In addition, a ranking item was constructed to elicit the views of the respondents for controlling the deaths in police custody. Two open-ended questions were framed to identify the reasons for non-implementation of the recommendations of several commissions and committees on custodial deaths. The views on the role of media to control the custodial deaths were also elicited through an open-ended question.

A copy of questionnaire is enclosed (Appendix 'B')

#### **4.3. DATA COLLECTION AND STATISTICAL TREATMENT**

For data collection, following steps were undertaken:

(i) Four hundred questionnaires were mailed to the Senior Police Officers (SP/DIG/IG level) who attended various inservice courses at National Police Academy during 1991-92 and 1992-93.

(ii) Fifty questionnaires were mailed to LBS National Academy of Administration, Mussoorie, to be administered on IAS Officers who attended inservice programmes.

(iii) One Hundred questionnaires were sent to the eminent Professors of different disciplines throughout the country.

(iv) Fifty questionnaires were sent to the Forensic Medicine Experts (Doctors).

(v) Fifty questionnaires were sent to the Journalists and Media persons.

(vi) Questionnaires were also administered on the Post Graduate students of the Deptt. of Criminology, Madras University.



## CHAPTER 5

### **ANALYSIS AND INTERPRETATION OF DATA**

The data collected from various groups was tabulated for content analysis and the application of statistical treatment. The result obtained after the analysis of data are presented below, in the following heads:

#### **5.1. THE RESPONSE OF CUTTING EDGE LEVEL POLICE OFFICERS**

5.1.1. The responses on 16 statements regarding Custodial Deaths are recorded in table (1)

**TABLE - 1**

#### **RESPONSE OF CUTTING EDGE LEVEL POLICE OFFICERS**

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	29	42	10	19.18 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	23	34	24	2.73 NS
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	45	25	11	21.63 S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	11	26	44	20.22 S
5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	19	29	33	3.85 NS
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	37	31	13	11.55 S
7.	Custodial deaths have a tacit approval of society in India.	16	13	39	17.84 S
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	34	29	18	4.96 NS
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	12	33	36	12.66 S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	28	28	25	0.23 NS
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	30	21	30	1.99 NS
12.	There is no single policemen who is punished by the courts for the custodial deaths.	23	7	51	36.73 S
13.	Law has several convenient provisions to protect those involved in custodial deaths.	9	15	57	50.66 S
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	17	32	32	5.56 NS
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	20	25	36	4.96 NS
16.	Custodial deaths some times get mixed up with "encounters".	15	31	35	8.29 S

From table-1, it is evident that the cutting edge level police officers significantly agree (at .05 level of significance) on the following aspects of the custodial deaths:



## ITEMS OF AGREEMENT

- Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody. (1)
- Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse. (3)
- Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation. (6)
- Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state. (9)
- Custodial deaths some times get mixed up with "encounters".(16)

## ITEMS OF DISAGREEMENT :

- Women taken in custody become victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences. (4)
- Custodial deaths have a tacit approval of society in India. (7)
- There is no single policeman who is punished by the courts for the custodial deaths. (12)
- Law has several convenient provisions to protect those involved in custodial deaths. (13)

5.1.2. The cutting edge level police officers were asked to rank 5 most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference was as under:

1. Findings of enquiries, whether judicial or magisterial required to be implemented at the earliest and the culprits brought to book.
2. Intensive supervision and professional guidance of SIs and Inspectors of Police by Senior Police Officers will reduce the occurrence of custodial deaths.

3. In the case of custodial deaths, magisterial enquiry must not only be mandatory but should be immediate.

4. Interrogation cells manned by trained personnel must be separately opened.

5. Police Stations are required to have adequate rooms with some privacy for female detainees.

**5.1.3.** The response of Cutting Edge Level Police Officers on the following question after content analysis was as under:  
Question : "There are several commissions and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state ?

**Response** 1) The lower functionaries in police lack in knowledge of the basic impact of custodial deaths.

2) Officers on and above the rank C.I. should regularly check the Police Sub-Stations.

3) The Commissions of Enquiry are being instituted for calming down the situation and not for bringing any change.

4) Many respondents indicated that they were not knowing the various Committees' and Commissions' recommendations to control Custodial Violence.

5) Those investigating criminal cases are not well trained in the skills of scientific interrogation. They should also be made acquainted with the legal provisions relating to the Custodial deaths. The Senior Officers do not supervise the investigating officers. They should also inspect the lock-ups personally and see that no innocent and sick persons are detained in the lock-ups.

6) Third Degree Methods are being used to recover property and for improved crime statistics.

7) Over-enthusiastic and careless policemen usually indulge in the acts of custodial violence.

8) The Lock-ups should be maintained neatly and should be inspected by the Second Class Magistrate.

9) At times, political pressure on the investigating officers leads to custodial deaths.

10) Police force is not sufficient to meet the pressure of work at the Station house level.

11) Proper medical care of the arrested persons is not being ensured.

5.1.4. When asked about the role of media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths, the responses from Cutting Edge Level Police Officers were mixed. Most of them agreed that the media was exaggerating the problem. A few, however, agreed on the positive role the media was playing to control custodial deaths in our country.

## 5.2 THE RESPONSE OF SENIOR POLICE OFFICERS

5.2.1. The responses on 16 statements regarding the Custodial Deaths are recorded in table (2)

TABLE - 2

### RESPONSE OF SENIOR POLICE OFFICERS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	20	28	6	13.78 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	12	19	23	3.45 NS
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	8	26	20	9.34 S
4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	9	23	22	6.78 S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	5	19	30	17.45 NS
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	34	10	10	21.34 S
7.	Custodial deaths have a tacit approval of society in India.	3	17	34	26.78 S
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	12	27	15	7.00 NS
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	14	26	14	5.34 NS
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	9	12	33	19.0 S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	14	21	19	1.45 NS
12.	There is no single policemen who is punished by the courts for the custodial deaths.	0	9	45	63.00 S
13.	Law has several convenient provisions to protect those involved in custodial deaths.	5	20	29	16.33 S
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	14	22	18	1.78 NS
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	21	15	18	1.0 NS
16.	Custodial deaths some times get mixed up with "encounters".	17	21	16	0.78 NS

From table-2, it is evident that the Senior police officers significantly agree (at .05 level of significance) on the following aspects of the custodial deaths:

#### **ITEMS OF AGREEMENT**

- Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody. (1)

- Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse. (3)

- Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences. (4)

- Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths. (8)

- Custodial deaths are due to poor knowledge of the policemen about the legal consequences. (9)

### ITEMS OF DISAGREEMENT

- Because of the stigma attached to police custody, over-reactive women commits suicide, as-and when opportunities arise in police custody. (5)

- Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation. (6)

- Custodial deaths have a tacit approval of society in India. (7)

- Powerful politicians use police personnel settle scores with their opponents and exterminate them. (10)

- There is no single policemen who is punished by the courts for the custodial deaths. (11)

- Custodial deaths some times get mixed up with "encounters". (12)

- Law has several convenient provisions to protect those involved in custodial deaths. (13)

**5.2.2.** The Senior Police Officers were asked to rank 5 most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference is as under:

1. Findings of enquiries, whether judicial or magisterial require to be implemented at the earliest and the culprits be brought to book.

2. Intensive supervision and professional guidance by the Sub- Divisional Police Officers of the Station House Officers will reduce the custodial deaths.

3. Interrogation cells manned by trained personnel must be separately opened.

4. In the case of custodial deaths, magisterial enquiry must not only be mandatory but should be immediate.

5. Police personnel are required to be trained intensively on law relating to custodial deaths and skills of interrogation.

**5.2.3.** The response of Senior Police Officers on the following question after content analysis was as under: "There are several commissions and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state ?

**Response 1.** The Custodial Deaths are because of unwillingness on the part of Senior Officers to take the problem seriously. There is a general feeling that custodial deaths are very few when compared to large volume of arrests.

2. There seems to be lethargy on the part of bureaucracy

3. In-service training of sub-ordinate ranks is not being paid proper attention in States. for shaping the attitudes and conduct of policemen to stop custodial deaths.

4. The State Governments do not consider it imperative to eliminate the use of third degree methods in police working. A large segment including certain ministers, bureaucrats and senior police officers feel that rough treatment to criminals is desirable because since it builds proper image of police.

5. Lack of political will and strong Public opinion are the reasons of occurrence of custodial deaths.



6. Police Stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.

7. Some police personnel do not have adequate skills of investigation and utilise third degree methods on persons taken in custody.

8. Non-implementation of suggestions made by several Commissions and Committees is also one of the reasons of custodial violence.

9. Most of the victims of custodial deaths are from poor background. Either they belong to scheduled castes or tribes or other backward classes or poor from the so-called forward classes. State does not bother about them.

10. No pressure groups working on behalf of the victims of custodial deaths, to compel the government to implement the suggestions made by the committees and commissions to control the custodial violence.

11. Very often, Committees and Commissions are appointed to look over a crisis or to suppress people emotions over the incident. As soon as temper cools down, government also forgets about it.

12. As long as the police are misused by vested interests for personal and political purposes, all such Commissions and Committees on custodial violence will be meaningless.

13. Undue emphasis is given to the crime figures, Slow process of modernization of police force; Will to implement, lack of resources, poor training of personnel and lack of respect and commitment to law of the land are some reasons for custodial deaths.

14. There is feeling of brotherhood among police at different levels. Therefore, strong action is not taken against erring policemen.

**5.2.4.** The Senior Police Officer when asked about the role of multi-media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths. The responses were mixed. Most of the police officers agreed that the media was exaggerating the problem. A few agreed on the positive role the media is playing to control the custodial deaths in our country.

Some reactions were:-

- The media is certainly making greater propoganda about these deaths which should be welcomed. Increased awareness among the poorer sections of society and main victims would increase resistance from them against such police brutality. Police which seeks publicity in the same multi-media by bending backwards for their achievements should not shy away by such adverse propaganda, but should try to improve matters by avoiding custodial deaths.

- Multi-media has a responsibility to expose the excesses committed by state and create awareness among the masses. Suppression of custodial deaths was possible in the past, but it is no longer possible now. Certainly media is playing a vital role in exposing the misdeeds of police. Further, the poorer sections of society have no courage in the past to complain against police, because of their ignorance, illiteracy and poor social status. But now owing to spread of literacy, growing awareness and partial democratic decentralization affected people are opening their mouths and making complaints to the concerned.

## 5.3 THE RESPONSE OF I.A.S. OFFICERS

5.3.1. The responses of IAS Officers on 16 statements regarding the Custodial Deaths are recorded in table (3)

### RESPONSE OF I.A.S. OFFICERS

TABLE - 3

#### RESPONSE OF IAS OFFICERS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	12	5	0	12.82 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	2	7	8	3.65 NS
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	1	8	4	6.12. S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	7	6	4	6.12 S
5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	1	9	7	2.24 NS
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	6	8	3	2.24 S
7.	Custodial deaths have a tacit approval of society in India.	3	2	10	5.06 NS
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	3	2	12	10.71 NS
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	3	8	6	2.24 NS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	2	8	9	4.36 NS
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	3	9	5	3.3. NS
12.	There is no single policeman who is punished by the courts for the custodial deaths.	3	7	7	1.88 NS
13.	Law has several convenient provisions to protect those involved in custodial deaths.	2	8	7	3.65 NS
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	7	8	2	3.65 NS
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	8	7	2	3.65 NS
16.	Custodial deaths some times get mixed up with "encounters".	7	8	2	3.65 NS

From table-3, it is evident that the I.A.S. Officers significantly agree and disagree at .05 level of significance on the following aspects of the custodial deaths:

## ITEMS OF AGREEMENT

— Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.(1)

— Women taken in custody become victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.(4)

— Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation. (5)

## ITEMS OF DISAGREEMENT

— Custodial deaths are due to poor knowledge of the policemen about the legal consequences. (8)

**5.3.2.** The I.A.S. officers were asked to rank 5 most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference was as under:

1. Police Stations are required to have adequate rooms for detention with some privacy for female detainees.

2. Intensive supervision by the Sub-Divisional Police Officers and Station House Officers and professional guidance will reduce the custodial deaths.

3. Findings of enquiries, whether judicial or magisterial, are required to be implemented at the earliest and the culprits brought to book.

4. Police personnel are required to be intensively trained on law relating to custodial deaths and skills of interrogation.

5. In the case of custodial deaths, magisterial enquiry must not only be mandatory, but should be immediate.

**5.3.3.** The response of I.A.S. Officers on the following question after content analysis was as under: Question - "There are several commissions and committees at the National and State

level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state ? "

## Response

1. The person who dies in custody, invariably is a poor person with no backward and forward linkages. His death is more of statistics and never raises eyebrows.

2. Lack of public sensitisation on the issue of custodial violence and the political- will are also the reasons of occurrence of custodial deaths.

3. Non-exposure of lower level police personnel to the committees and commissions recommendations on stopping custodial violence is one of the most important reasons.

4. The various enquiry reports are not acted upon for prevention of custodial deaths.

5. Lack of training and resources to conduct scientific investigation.

6. More interference with Police functionaries who find little time for proper follow-up of cases because of preoccupation with routine policing especially with law and order duties.

7. Indiscipline among the ranks and lack of public awareness on the issue of custodial violence.

8. The police being perceived as an agency to "settle" political scores and secure electoral gains fortunes is receiving political patronage down the line.

9. Inertia from higher echelons of the police and home departments who view police as a symbol of "power".

10. Every official tries to "influence" the reports related to the custodial deaths.

11. In several parts of country, law enforcing agencies are working under stressful conditions. Better training and equipment to handle such situations are desirable. This, alongwith alert public watch dog committees will reduce the occurrence of custodial deaths.

12. Custodial deaths often take a turn and emerge as political issues against the ruling party. Enquiry findings sometimes cause discomfiture welcome inconvenience to the ruling party. This hampers implementation of the recommendations.

13. Politicians in general are very much concerned about the 'Morale' of police. When they find that the recommendations of the commissions when implemented can generate and dissatisfaction among policemen, they postpone the implementation. Policemen are capable of "creating" a political crisis by unwarranted firing, lathi-charge etc. Therefore, the ruling party tries to create an impression among policemen that they would support them as far as possible. Delay in implementation of reports is one of the ways of eliciting police support.

**5.3.4.** When asked about the role of media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths, the response from IAS Officers were mixed. Most of the I.A.S. officers agreed that the media was exaggerating the problem. A few agreed on the positive role the media is playing to control the custodial deaths in our country.

Some comments were -

— It is the prime responsibility of the media to give wide publicity for any conduct of policeman leading to death of a person in police custody. Without going into the details, some members of the Media wrongly criticize and blame the police, which in turn affect the morale of police.

— Media channels only give a wider publicity, but it is not true to call them exaggerated.



## 5.4. THE RESPONSE OF DOCTORS

5.4.1. The responses of Doctors on 16 statements regarding the Custodial Deaths are recorded in table (4)

TABLE - 4

### RESPONSE OF DOCTORS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	9	8	1	6.34 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	7	5	6	0.34 NS
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	4	5	9	2.34 NS
4.	Women taken in custody become victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	9	8	1	6.34 S

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	4	12	2	9.34 S
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	8	4	6	1.34 NS
7.	Custodial deaths have a tacit approval of society in India.	3	2	13	15.06 NS
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	5	10	3	4.34 NS
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	4	7	7	1.01 NS
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	6	2	10	5.34 NS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	5	12	1	10.3 S
12.	There is no single policemen who is punished by the courts for the custodial deaths.	5	1	12	10.3 S
13.	Law has several convenient provisions to protect those involved in custodial deaths.	7	9	2	4.34 NS
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	15	3	0	21.0 S
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	10	4	4	4.01 NS
16.	Custodial deaths some times get mixed up with "encounters".	15	31	35	8.29 S

From table-4, it is evident that the doctorssignificantly agree and disagree at .05 level of significance on the following aspects of the custodial deaths:

#### ITEMS OF AGREEMENT

- Police do not have adequate skills of interrogation and use third degree methods on persons taken in custody. (1)

- Women taken in custody become victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences. (4)

- Because of the stigma attached to police custody, over-reactive women commit suicide, as and when opportunities arise in police custody. (5)

- Powerful politicians use police personnel to settle scores with their opponents and exterminate them. (11)

- Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports. (14)

### ITEM OF DISAGREEMENT

- There is no single policeman who is punished by the courts for the custodial deaths. (12)

**5.4.2** The Doctors were asked to rank 5 most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference is as under:

1. Findings of enquiries, whether judicial or magisterial require to be implemented at the earliest and the culprits brought to book.

2. Police stations are required to have adequate rooms for detention with some privacy for female detainees.

3. Intensive supervision by the Sub-Divisional Police Officers and Station House Officers and professional guidance will reduce the custodial deaths.

4. In the case of custodial deaths, magisterial enquiry must not only be mandatory, but should be immediate.

5. Media must give wide publicity for any brutal conduct of a policeman leading to the death of persons in police custody.

**5.4.3.** The response of Doctors on the following question after content analysis was as under: Question - "There are several

commissions and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state ?"

### **Response**

1. Leniency of the higher police officers towards lower level functionaries who indulge in custodial violence. Policemen involved in custodial deaths should be "sincerely" punished.
2. Professional training to police personnel is lacking.
3. Higher Police officials are not in direct touch with all cases related to custodial deaths.
4. Wide publicity about the rights of the people and responsibility of the policemen is not being given.
5. Apathy on the part of intelligentsia to build-up public opinion against the undesirable activities of policemen.
6. Lack of knowledge of lower police officials of the criminal psychology.
7. Commissions and Committees' report are not being given wide publicity in Newspapers, radio and T.V.
8. Commissions and Committees take very long time to produce the report on custodial violence.
9. Police pressurize the Doctors to change the reports of Post-mortem examination.

**5.4.4.** The Doctors when asked about the role of multi-media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths, the response of the Doctors was mixed. Most of the Doctors agreed that the media was exaggerating the problem. A few agreed on the positive role the media was playing to control the custodial deaths in our country. According to some of them, multimedia is exaggerating the problem to some extent only as a part of their business strategy. At the same time, media is playing an important role in safeguarding Human Rights.

They put forward the following two important observations

- Journalists do not cross counter-check the facts and details of situation from the concerned police officials as well as medical officers who conduct post-mortem examinations in custodial deaths and other sensitive issues.

(ii) Most innocent deaths in custody are also "exploited" due to lack of awareness about the cause death. Personal rivalry between policemen and journalists may also play a role in wide publicity. Media has done a great service to the society by creating general awareness regarding the problem of Custodial deaths.

## 5.5 THE RESPONSE OF JUDICIAL OFFICERS

5.5.1. The respons of Judicial Officers on 16 statements regarding the Custodial Deaths are recorded in table (5)

**TABLE - 5**  
**RESPONSE OF JUDICIAL OFFICERS**

SI No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	19	13	2	13.12 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	8	19	7	7.82 S
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	10	14	10	0.95 NS
4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	17	10	7	4.65 NS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	10	9	15	1.83 NS
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	8	17	9	4.3 NS
7.	Custodial deaths have a tacit approval of society in India.	0	13	21	19.38 S
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	16	16	2	11.52 S
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	15	8	11	2.18 NS
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	14	5	15	5.36 NS



Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	21	6	7	12.4 S
12.	There is no single policeman who is punished by the courts for the custodial deaths.	11	5	18	7.48 S
13.	Law has several convenient provisions to protect those involved in custodial deaths.	6	16	12	4.46 NS
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	13	15	6	3.94 NS
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	17	8	9	4.30 NS
16.	Custodial deaths some times get mixed up with "encounters".	15	14	5	5.36 NS

From table-5, it is evident that the Judicial Officers significantly agree and disagree at .05 level of significance on the following aspects of the custodial deaths:

### **ITEMS OF AGREEMENT**

Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody. (1)

- Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide. (2)
- Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their death. (8)
- Powerful politicians use police personnel to settle scores with their opponents and exterminate them. (11)

### ITEMS OF DISAGREEMENT

- Custodial deaths have a tacit approval of society in India (7)
- There is no single policeman who is punished by the courts for the custodial deaths. (12)

**5.5.2.** The Judicial Officers were asked to rank the most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference was as under:

1. Any conviction of the police personnel due to custodial deaths must be given wider publicity than that of any other criminal.

2. Findings of enquiries, whether judicial or magisterial are required to be implemented at the earliest and the culprits brought to book.

3. Police personnel are required to be intensively trained on law relating to custodial deaths and skills of interrogation.

4. Police stations are required to have adequate rooms for detention with some privacy for female detainees.

**5.5.3.** The response of Judicial Officers on the following question after content analysis was as under: Question - "There are several commissions and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state " ?

Response 1. The Government is not serious about the problem of custodial deaths in our country.

2. Those in power do not want to take the police to task. They treat police as an instrument of coercion.

3. The commissions and committees are a drain on the exchequer. Their wisdom is not translated into action as their words have no binding authority.

4. Some other reasons cited by the Judicial Officers were:

- Political interference.
- Lacunae in procedural laws.
- Reluctance of law enforcing agencies.
- Lack of political will
- Lack of publicity to Commission/Committee reports.
- Failures in creating awareness on account of which the debate on the issue is inadequate.
- Access to reports of Commissions and Committees.
- Public opinion is not strong enough.
- Lack of sufficiently trained police functionaries.

5. It is advised that police department should take steps on its own by way of prompt punishments in case of offences relating to lock-up deaths. Such punishment must be severe.

6. Most of the Commissions are appointed only as an "eye wash."

7. Implementation of suggestions should be given wide publicity.

8. Third degree methods during interrogation should be avoided.

**5.5.4.** When asked about the role of media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths, the responses from Judicial Officers were mixed. Most of the Judicial officers agreed that the media was exaggerating the problem. A few agreed on the positive role the media is playing to control the custodial deaths in our country.

## 5.6 THE RESPONSE OF ACADEMICIANS

5.6.1. The responses of Academicians on 16 statements regarding the Custodial Deaths are recorded in table (6)

**TABLE - 6**  
**RESPONSE OF ACADEMICIANS**

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	16	8	0	16 S
2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	10	10	4	3.0 NS
3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	15	5	4	6.76 S
4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	9	11	4	3.22 NS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
5.	Because of the stigma attached to police custody, over-reactive women commits suicide; as and when opportunities arise in police custody.	4	11	5	3.26 NS
6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	8	7	15	14.0 S
7.	Custodial deaths have a tacit approval of society in India.	2	4	15	14.0 S
8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their deaths.	9	7	7	0.35 NS
9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	11	7	4	3.36 NS
10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	6	10	8	1.0 NS

Sl No.	Statement	Agree	Agree to some extent	Disagree	Chi-Square (.05 level)
11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	14	8	2	9.0 S
12.	There is no single policemen who is punished by the courts for the custodial deaths.	10	2	12	7.0 S
13.	Law has several convenient provisions to protect those involved in custodial deaths.	10	9	3	3.91 NS
14.	Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports.	18	6	0	21.0 S
15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	17	5	2	15.86 S
16.	Custodial deaths some times get mixed up with "encounters".	16	6	2	13.0 S

From table-6, it is evident that the academicians significantly agree and disagree at .05 level of significance on the following aspects of the custodial deaths:

### ITEMS OF AGREEMENT

- Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody. (1)

- Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse. (3)

- Powerful politicians use police personnel settle scores with their opponents and exterminate them. (11)

- Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports. (14)

- Public opinion is not strong enough to bring change in the situation of custodial deaths. (15)

- Custodial deaths sometimes get mixed up with "encounters".(16)

### ITEMS OF DISAGREEMENT

- Custodial deaths have tacit approval of society in India (7)

- There is no single policeman who is punished by the courts for the custodial deaths. (12)

**5.6.2.** The Academicians were asked to rank 5 most important ways of mitigating the problem of deaths in police custody. The response after cumulative rating procedure in terms of preference was as under:

1. Any conviction of the police personnel due to custodial deaths must be given as wide a publicity as that of any other serious crime.

2. Media must give wide publicity for any brutal conduct of a policeman leading to the death of persons in police custody.

3. Findings of enquiries, whether judicial or magisterial, are required to be implemented at the earliest and the culprits brought to book.

4. Police personnel are required to be intensively trained on law relating to custodial deaths and skills of interrogation.

5. Police stations are required to have adequate rooms for detention with some privacy for female detainees.

**5.6.3.** The response of Academicians on the following question after content analysis was as under: Question - "There are several commissions and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these suggestions kindly state?"

### Response

1. Any conviction of the police personnel due to custodial deaths must be given as wide publicity as that of any other serious crime.
2. Findings of enquiries, whether judicial or magisterial, require to be implemented at the earliest and the culprits brought to book.
3. Police personnel are required to be trained intensively on law relating to custodial deaths and the skills of interrogation.
4. Police stations are required to have adequate rooms for detention with some privacy for female detainees.
5. There is no bureaucratic or political will which alone will break the nexus between criminals and officials/police/politicians.
6. The suggestions are inter-linked with various other problems like literacy levels of police at lower cadres, pay scales, police organisation, etc., which involve expense of time and energy.
7. General lack of visionary zeal in the decision-makers at all levels.
8. Corrupt government, which in most cases support the culprits when they belong to the ruling party.
9. Corruption among the policemen at middle and lower levels.
10. The interests of the politicians come in the way of implementation of reports of Committees/Commissions.



11. Some of the suggestions involve financial expenditure, which obviously is the reason for non-implementation of such suggestions to control custodial violence.

12. Politicians in power want to use the police as a tool to show authority and to suppress their political opponents.

13. There is greater gestation periods between formation of commissions, publication of reports and their implementation.

14. The task of investigation should be entrusted to trained police personnel.

15. If no action is taken against policemen responsible for custodial deaths or other excesses, they also loose sensitivity and therefore consider themselves as "rulers" rather than servants.

**5.6.4.** When asked about the role of media channels in recent years for providing wider publicity and even exaggerating the problem of custodial deaths, the responses of the Academicians were mixed. Most of them agreed that the media was exaggerating the problem. A few agreed on the positive role the media is playing to control the custodial deaths in our country.

#### **5.6.5. Some more comments on custodial violence**

- There has indeed been an increase in custodial deaths because over the past 20 years there has been an increase quotient of violence involving state/police and mafia groups.

- Any law enforcement agency has to cope with the problem of dynamics of social change and be in tune with it. Greater social awareness, human rights consciousness, winds of change sweeping the country, etc., have all contributed to greater public focus on custodial deaths. It is the social awareness that attracts media attention. Media attention is not the cause but the effect.

- It is not true to say that crime rate was more in the past. Custodial deaths are related not only to the crime but also to the

demographical trends; increasing poverty and the politically conscious militant activities.

- Custodial detainees must be classified as criminal, political etc., and suitable action must be devised to alter the human suffering. The degree of brutality has been severised. Changing trend in crimes and criminal behaviour has also led to an increase in custodial deaths and violence.

- The change over from a colonial regime to a democratically elected Government has the implicit assumption that the citizens will be given protection to enjoy their human rights, liberty and equality before law. Hence, we should not compare the colonial rule with the present day democratic social order, where the people's opinion is expressed through the media.

## **5.7 THE RESPONSE OF JOURNALISTS :**

Journalists identified the reasons for the occurrence of Custodial deaths in our country. Lack of political will, dearth of funds, unwilling bureaucratic set-up, absence of citizen's consciousness and political pressure affecting implementation of commissions' or committees' suggestions are the main reasons for the custodial deaths. They observed that most of the parties and leaders were interested only in raising the issue but not in evolving an operational framework for checking the custodial violence. Press publicity is necessary to mobilise public opinion against such issues. It will also give lot of scope for debate in various circles for avoiding custodial deaths.

They recommended special training in the area of interrogation to the police officers. The police, according to them, should be trained in the behavioural skills and they should be made to realise that they are accountable to the society at large. The political interference in police work should also be avoided. They were of the opinion that no sympathy should be showered on police personnel who were involved in the custodial deaths. No pressure should be exerted on doctors who conduct post-mortem examination. In in-service training programmes for police personnel, emphasis should be laid on the Humanitarian Law and Human Rights. Inputs on stress management and relaxation techniques should also be provided in programmes.

**5.8 THE RESPONSE OF THE ENTIRE SAMPLE :** At 0.05 level of significance, the respondents were found to agree/disagree on the following aspects of custodial deaths:

### **ITEMS OF AGREEMENT**

- Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody. (1)
- Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide. (2)
- Because of the stigma attached to police custody, over-reactive women commit suicide, as and when opportunities arise in police custody. (5)

- Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation. (6)

- Most of the alleged law breakers taken to police custody are from poorer strata of the society and have poor health, harsh treatment by police leads to their death. (8) - Police form part of the society. The brutality of the police is only a reflection of the violent tendencies of the State. (9)

- Custodial deaths are due to poor knowledge of the policemen about the legal consequences. (10)

- Powerful politicians use police personnel to settle scores with their opponents and exterminate them. (11)

- Public opinion is not strong enough to bring change in the situation of custodial deaths. (15)

### **ITEMS OF DISAGREEMENT**

- Custodial deaths have a tacit approval of society in India. (7)

- There is no single policemen who is punished by the courts for the custodial deaths. (12)

- Law has several convenient provisions to protect those involved in custodial deaths. (13)

- Magisterial enquiries and judicial enquiries on custodial deaths have only resulted in voluminous reports. (14)

The respondents suggested the following 5 ways, in order of preference, for mitigating the problem of deaths in Police Custody:

1. Findings of enquiries, whether judicial or magisterial, are required to be implemented at the earliest and the culprits brought to book.

2. Intensive supervision by the Sub-Divisional Police Officers and Station House Officers and professional guidance will reduce the custodial deaths.

3. In the case of custodial deaths, magisterial enquiry must not only be mandatory, but should be immediate.

4. Police stations are required to have adequate rooms for detention with some privacy for female detainees.

5. Police personnel are required to be intensively trained on law relating to custodial deaths and skills of interrogation.

## **5.9. THE VIEWS OF TOP ECHELONS OF POLICE**

Opinionnaire on 'Custodial Deaths' was mailed to 70 Senior Officers (DG level), who were either in service or retired, to elicit their views on control of 'Custodial Deaths'.

The data was analysed by adopting content analysis procedure. The results are summarised in the following heads:

### **5.9.1. CAUSES OF CUSTODIAL DEATHS**

When asked to identify five most important reasons of occurrence of custodial deaths in our country, the respondents identified the following:

1. Custodial deaths occur due to the use of third degree methods by police.

2. There is lack of effective supervision by the Senior Police Officers and the subordinate ranks lack in proper attitudinal orientation to avoid Custodial Violence.

3. Training is inadequate in the areas of Scientific investigation and interrogation.

4. The police are insensitive to people and therefore prone to be brutal.

5. Extraneous pressures because of political forces, personal vendetta, and corruption lead to 'Custodial Deaths' in our country.

Other five low intensity reasons for the occurrence of custodial deaths identified were:

1. Police lack confidence in the Criminal Justice System.

2. Due to pressure exerted by officers to show results, there is always a performance anxiety among subordinate ranks to perform even by bypassing law.

3. Liberal bail provisions, stress on foolproof evidence etc., are some of the provisions in the legal system which encourage evil practices resulting in 'Custodial Deaths'.

4. Lack of professionalism and weak internal organizational democracy are also the factors leading to Custodial Violence.

### 5.9.2. EFFECTS OF CUSTODIAL VIOLENCE

When asked about the effect of 'Custodial deaths' on the image of police, they responded that it would be bad. There were of the opinion that because of the occurrence of custodial deaths -

1. The police force will be perceived by public as a brutal force no less than murderers.

2. Besides tarnishing the image, it will also distance the people from the police.

3. The people participating in policing will be the least because of custodial violence and rape in police custody.

4. Human Rights Organizations will "demoralise" the police and the credibility of the police will be lowered further in the eyes of the common man.

5. 'Custodial deaths' negate the effects of all good work done by police.

### 5.9.3. REACTIONS TO AMNESTY INTERNATIONAL AND ASIA WATCH REPORTS

The responses to the question - HOW FAR DO YOU AGREE WITH THE OBSERVATIONS OF AMNESTY INTERNATIONAL, ASIA WATCH ETC., ABOUT CUSTODIAL DEATHS IN OUR COUNTRY? - were mixed.

Many Senior Police Officers observed that the reports appeared to be substantially correct. Efforts should be made to improve the police performance. A few viewed that while some observations of these organizations were correct and need to be well taken, most were generally exaggerated and motivated.

#### 5.9.4. SUGGESTIONS FOR CONTROLLING CUSTODIAL DEATHS

Following were the suggestions from the top echelons of police for controlling the 'custodial deaths' in our country.

1. Punish the subordinates who actually mar the reputation of police.

2. Some Senior Police Officers act as indulgent parents for lower ranks and protect wrong - doers, forgetting that their first loyalty should be to the service and its image. They should not shield criminals in uniform. Severe punishment should be given to the erring police officers.

3. The training interventions should focus more on sensitization of Police functionaries to human relations. Behavioural training for exhibiting civility and politeness should be given.

Training inputs may further be focussed on -

i) Rule of law and role of police.

ii) Scientific aids to investigation.

iii) Methods of interrogation.

4. There should be astute and continuous supervision in the investigation of crimes by senior officers.

5. Every case of Custodial death should be enquired on the spot by a judicial officer of the rank of district and Sessions Judge. It should be in the form of trial by adopting the inquisitorial principles.

6. An effective legislation should be made for compulsory medical examination of accused before and after the police remand.

7. Continuous judicial monitoring of condition of Police and judicial custody should be done.



8. Night visits to Police stations by Supervisory Officers should be carried out.

9. Shri G.C. Singhvi, Former Director of the NPA, put forward the following suggestions for controlling the Custodial deaths:

i) No weightage should be given by law to pre-trial confessions. Recording of pre-trial confessions should be prohibited by law.

ii) Statistical orientation of the police in the investigation/recovery of property related offences should make way for scientific orientation in such investigation/recoveries.

iii) If an accused person in police custody is ill, he should immediately be hospitalised. Implements, which may help an accused person to commit suicide, should be kept-out of his reach while in custody.

iv) The National Police Commission (1977-81) had recommended that every State Government should nominate Additional Sessions Judge for every district (in consultation with the High Court) to conduct a judicial inquiry in all cases of alleged rape of a woman in police custody, death or grievous hurt caused to a person in police custody and death of two or more persons from police firing in the dispersal of an unlawful assembly and submit report to the State Government who shall publish the report together with action taken thereon within two months of the receipt of the report. Unfortunately, no action has been taken in pursuance of this recommendation. It should be taken now. It will predictably be a right step in the direction of controlling the occurrences of custodial deaths in our country.

v) The Law Commission of India, on a reference made by the Supreme Court of India, recommended in June 1985 that section

114 B be inserted in the Indian Evidence Act, 1872 to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by the police officer-in-charge. Such a provision would have been of considerable operational significance but has yet not been introduced.

10. The Police Chief should be removed whose regime records high average of Custodial deaths.

11. Introduction of modern and scientific equipments/facilities for investigations are necessary.

12. Improvement in service conditions of lower ranks and good work environment at Police station level are necessary.

13. We should separate " Law & Order Police " from " Criminal Investigation Police "

14. Institution of a 'watch-dog body' at every Police station, comprising of persons from various sections of society and supervisory officers as observers should be tried.

15. Public vigilance and monitoring of police operations on a systematic basis are essential.

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## CHAPTER 6

### RECOMMENDATIONS

Based on the findings of study, following are recommended as the remedial measures to prevent the Custodial deaths in our country.

i) Senior Police Officers should not protect police functionaries at all when they are found guilty in the custodial crimes. The enquiry should be initiated immediately after the occurrence of custodial deaths. They should ensure that they are punished very severely.

ii) The training interventions for police functionaries should focus on the following aspects:

a) Sensitivity towards the observance of Human Rights by Police.

b) Positive attitude towards the downtrodden and the minorities.

c) 'Human Relations Training' focusing on aspects like communication, empathy and effective listening.

d) Skills in interrogation and scientific investigation.

e) Teaching of the provisions of law dealing with the deaths in police custody and the consequences for the police functionaries more intensively.

iii) The mechanisms should be developed at the organisation level for transmitting the knowledge of the various sections of law, findings of the judicial commissions and committees related to Custodial crimes and the information related to the police officers who have been punished by law for indulgence in Custodial Crimes to the Police functionaries at the cutting edge level.

iv) As there is already a provision, there should be a mandatory magisterial inquiry in every case of death in police custody. The District Magistrate should take immediate cognizance

of such events and carry on-the-spot enquiry to ensure justice and speedy action against guilty policemen.

v) There should be judicial and magisterial activism to make a conscious effort to prevent torture or maltreatment in police lock-ups. The magistrate must ask the arrested person whether he requires legal assistance or not. The legal assistance can be given not only during a trial but also when the accused is produced for the first time before the magistrate.

vi) No weightage should be given by law to pre-trial confessions. Recording of pre-trial confessions should be prohibited by law.

vii) Statistical orientation in detection/recovery of stolen property of the police should make a way for scientific orientation in disposal of such cases.

viii) If an accused person in police custody falls ill, he should be hospitalised immediately. Implements, which may help an accused person to commit suicide, should be kept out of his reach.

ix) The National Police Commission (1977-81) has recommended that every State Government should nominate one Additional Sessions Judge for every district (in consultation with the High Court) who should conduct a judicial inquiry in all cases of alleged rape of a woman in police custody, death or grievous hurt caused to a person in police custody and death of two or more persons from police firing in the dispersal of an unlawful assembly and submit report to the State Government who shall publish the report together with action taken thereon within two months of the receipt of the report. Unfortunately, no action has been taken in pursuance of that recommendation. It should be taken now, for it will predictably be a right step in the direction of controlling the occurrence of custodial deaths in our country.

x) The Law Commission of India, on a reference made by the Supreme Court of India, recommended in June 1985 that section 114B be inserted in the Indian Evidence Act, 1872 to introduce a rebuttable presumption that injuries sustained by a

person in police custody may be presumed to have been caused by the police officer-in-charge. Such a provision would have been of considerable operational significance indeed but the Act has yet not been amended.

xi) The Senior Police Officers should stress before the subordinates on the need of strict compliance of law to check the incidence of Custodial violence. They should supervise their subordinate officers for better investigation of cases. From time to time, they should also check the police stations and see that no innocent and poor persons are detained unlawfully. They should also ascertain that lock-up rooms are totally free from articles such as kerosene, rope and sharp weapons so as to prevent suicide by the detainees. They should also check the use of third degree methods.

xii) The introduction of Custodial memo as recommended by the Calcutta High Court to control the Custodial deaths may also be tried.

xiii) The women detainees should be interrogated by women police only.

xiv) No pressure should be exerted by police on the doctors who conduct post-mortem examination for ensuring free, frank and honest enquiry of cases related to the Custodial deaths.

xv) The police should not succumb to pressures exerted by the politicians.

xvi) Very well developed interrogation rooms with trained persons in techniques of interrogation will reduce the occurrence of Custodial deaths.

xvii) Speedy implementation of the recommendations of Committees and Commissions Reports on custodial violence should be done.

xviii) Last but not the least, the National Police Commissions recommendations for controlling the Custodial deaths should be implemented without delay.

SARDAR VALLABHBHAI PATEL NATIONAL POLICE ACADEMY

(GOVERNMENT OF INDIA : MINISTRY OF HOME AFFAIRS)  
HYDERABAD-500 252

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OPINIONNAIRE

ON

CUSTODIAL DEATHS

1. WHAT ARE THE FIVE MOST IMPORTANT REASONS FOR THE OCCURRENCE OF CUSTODIAL DEATHS IN OUR COUNTRY ?

2. WHAT ARE THE EFFECTS OF CUSTODIAL DEATHS ON -

(i) POLICE IMAGE

(ii) PEOPLE PARTICIPATION IN POLICING

(iii) ANY OTHER

3. HOW FAR DO YOU AGREE WITH THE OBSERVATIONS OF AMNESTY INTERNATIONAL, ASIA WATCH ETC., ABOUT CUSTODIAL DEATHS IN OUR COUNTRY.

4. WHAT SHOULD BE DONE TO CONTROL THE OCCURRENCE THE CUSTODIAL DEATHS IN OUR COUNTRY ?

**A STUDY ON** **Appendix - B**  
**CUSTODIAL DEATHS IN INDIA**

**QUESTIONNAIRE**

We request you to kindly fill in the questionnaire. Your responses will be of immense value in conducting the study.

**PART-A : Background of the respondent.**

1.0 Name of the Respondent:

1.1 Age:

1.2 Sex:

1.3 Marital Status:

1.4 Education:

1.5 No. of Children :      Male:      Female:

1.6. Present occupation:

(In case you are retired public service, mention the designation at the time of retirement also)

1.7 Membership in any professional bodies:

Whether you belong to S.C/S.T/other backward classes: Yes/No.



## PART - B

2.0 Deaths in police custody have been a much discussed subject in recent years. The National Commission on Human Rights has expressed serious concern about this issue. We have listed below twelve statements regarding custodial deaths. We request you to record your response on the points scale for each of these statements by marking at the appropriate place of your choice with a mark:

		Agree	Agree to some extent	Disagree
2.1.1.	Police do not have adequate skills of interrogation and utilise third degree methods on persons taken in custody.	_____	_____	_____
2.1.2.	Police stations have become places of disrepute and highly sensitive persons taken in custody commit suicide.	_____	_____	_____
2.1.3.	Law breakers are generally prone to drinking, smoking and other evil habits, when they are subject to stress conditions, they collapse.	_____	_____	_____
2.1.4.	Women taken in custody becomes victims of sensuous temptations of police. Their resistance leads to harsh and brutal treatment with fatal consequences.	_____	_____	_____
2.1.5.	Because of the stigma attached to police custody, over-reactive women commits suicide, as and when opportunities arise in police custody.	_____	_____	_____
2.1.6.	Citizens, as victims of crime, often hurry the police officers and bring pressures for short cut methods of investigation.	_____	_____	_____
2.1.7.	Custodial deaths have atacite approval of society in India.	_____	_____	_____

		Agree	Agree to some extent	Disagree
2.1.8.	Most of the alleged law breakers taken to police custody are from poorer strata of society and have poor health. Harsh treatment by police leads to their death.	_____	_____	_____
2.1.9.	Police form part of the society. The brutality of the police leading to deaths in police stations is only a reflection of the violent tendencies of the state.	_____	_____	_____
2.1.10.	Custodial deaths are due to poor knowledge of the policemen about the legal consequences.	_____	_____	_____
2.1.11.	Powerful politicians use police personnel settle scores with their opponents and exterminate them.	_____	_____	_____
2.1.12.	There is no single Policeman who is punished by the courts for the custodial deaths.	_____	_____	_____
2.1.13.	Law has several convenient provisions to protect those involved in custodial deaths.	_____	_____	_____
2.1.14.	Magisterial enquiries and judicial enquiries on custodial deaths, have only resulted in voluminous reports.	_____	_____	_____
2.1.15.	Public opinion is not strong enough to bring change in the situation of custodial deaths.	_____	_____	_____
2.1.16.	Custodial deaths some times get mixed up with "encounters"	_____	_____	_____

3.0. Several ways of mitigating the problem of deaths in police custody are discussed. These are listed as below. Select among these, five as most important and assign a rank to each one of the five you have selected from the list, in the order of from 1 to 5. In case you have any other suggestion please state and also rank.

Rank  
order

- \_\_\_\_\_ In the case of custodial deaths, magisterial enquiry must not only be mandatory, but should be immediate.
- \_\_\_\_\_ Police personnel require to be intensively trained on law relating to custodial deaths and skills of interrogation.
- \_\_\_\_\_ Police stations require to have adequate rooms for detention with some privacy for females detainees.
- \_\_\_\_\_ Laws which protect the police personnel for custodial deaths require to be amended to remove any immunities, privileges and protections.
- \_\_\_\_\_ Interrogation cells must be separately opened manned by trained personnel.
- \_\_\_\_\_ Findings of enquiries, whether judicial or magisterial require to be implemented at the earliest and the culprits be brought to book.
- \_\_\_\_\_ Any conviction of the police personnel due to custodial deaths must be given as wide a publicity as that of any other criminal.
- \_\_\_\_\_ Intensive supervision by the Sub-Divisional Police Officers and Station House Officers and professional guidance will reduce the custodial deaths.
- \_\_\_\_\_ Media must give wide publicity for any brutal conduct of a policeman leading to the death of persons in police custody.

Any other

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

4.0. There are several commissions, and committees at the National and State level which have made several suggestions for reducing the problem of custodial deaths. What according to you, are the reasons for the non-implementation of these3 suggestions kindly state ?

5.0. It is said that the workers of custodial deaths has been existing at all periods of time, to the same degree if not, more. The multimedia channels in recent years have only made wider publicity and even exaggerated this problem. How far do you agree with this statement ?







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