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## **Custodial Violence as a tool of Censorship: A Threat to freedom of speech and Democratic Ethos in India**

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### **ABSTRACT**

Custodial violence represents one of the gravest violations of human dignity and constitutional morality in a democratic society. In India, it is not merely a problem of police excess but also functions as an indirect and powerful mechanism of censorship that suppresses dissent and silences marginalized voices. By creating an atmosphere of fear, insecurity, and intimidation, custodial violence discourages individuals from freely exercising their right to speech and expression guaranteed under Article 19 of the Constitution. When people begin to associate questioning authority with the risk of harassment, arrest, or torture, democratic participation itself becomes weakened and restricted. This paper examines custodial violence as an instrument that operates beyond physical harm, functioning as a psychological and institutional tool to control public opinion and discourage criticism of state power. It argues that custodial violence not only violates the right to life and personal liberty under Article 21 but also indirectly curtails freedom of expression by fostering silence and obedience. The study highlights how unchecked custodial abuse legitimizes authoritarian tendencies and undermines the constitutional promise of equality, liberty, and dignity. By analyzing constitutional provisions, judicial pronouncements, and international human rights standards, the paper demonstrates how custodial violence erodes democratic ethos and public trust in legal institutions. Special emphasis is placed on landmark Supreme Court judgments such as *D.K. Basu v. State of*

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West Bengal and Nilabati Behera v. State of Orissa, which recognize custodial violence as a serious constitutional wrong and impose accountability on the state for the protection of fundamental rights. These judicial interventions reveal the constitutional commitment to safeguarding human dignity and ensuring transparency in custodial practices. The paper further explores the relationship between state power, censorship, and accountability, arguing that when violence in custody goes unchecked, it indirectly normalizes repression and weakens the foundations of democracy. It also draws upon international instruments such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights to emphasize India's obligation to prevent torture and protect freedom of expression. Ultimately, the paper contends that protecting freedom of speech is inseparable from preventing custodial violence, as both are essential pillars of a vibrant and functioning democracy. It stresses the urgent need for structural reforms, independent oversight mechanisms, strict enforcement of judicial guidelines, and greater transparency in custodial administration to preserve democratic values and constitutional morality.

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## Introduction

Custodial violence has remained one of the most disturbing realities of the criminal justice system in India. Despite constitutional guarantees, judicial safeguards, and international human rights commitments, incidents of torture, illegal detention, and deaths in custody continue to occur with alarming frequency. Custodial violence is not only a violation of personal liberty under Article 21 of the Constitution but also an attack on the democratic structure of society. In a true democracy, citizens must feel free to express opinions, criticize authorities, and participate in public discourse without fear. However, when law-enforcement agencies misuse their power, it creates an atmosphere of intimidation that indirectly restricts freedom of speech and expression.

1. Freedom of speech and expression under art. 19(1)(a) is the backbone of a democratic society. The ensures that individuals can voice dissent, expose injustice, and hold authorities accountable. Custodial violence, when used as a method of coercion or punishment, becomes a silent form of



ensorship. It discourages people from reporting crimes, speaking against corruption, or challenging unlawful actions of the state. Thus, custodial violence goes beyond physical abuse, it becomes a mechanism to suppress democratic participation and critical thought.

This paper seeks to analyze custodial violence as an indirect tool of censorship that threatens freedom of expression and weakens democratic ethos. It attempts to establish that unless custodial violence is effectively addressed, constitutional freedoms remain merely theoretical. By examining legal provisions, judicial pronouncements, and international standards, the paper highlights the urgent need for accountability and institutional reform to preserve the spirit of democracy in India.

2. Concept of Custodial violence refers to any form of physical, mental, or psychological abuse inflicted on a person who is under police or judicial custody. It includes torture, illegal detention, harassment, humiliation, and even death caused by authorities responsible for protection and enforcement of law. The term “custody” implies control or restraint over an individual, and violence in such a situation reflects a gross abuse of power and betrayal of public trust.

In India, custodial violence is not explicitly defined in any single statute. However, it is recognized through constitutional provisions, criminal law, and judicial interpretation. Sections 330 and 331 of the Indian Penal Code (now corresponding provisions under the *Bhartiya Nyaya Sanhita*) criminalize the act of causing violence violates multiple fundamental rights, particularly against self-incrimination, and art. 21, which guarantees the right to life and personal liberty. Torture and ill-treatment in custody negate the principle of “innocent until proven guilty” and undermine the rule of law. Instead of serving justice, such practices create a culture of fear and submission.

Moreover, custodial violence has a chilling effect on society. When people witness or hear about custodial torture, they become reluctant to approach authorities or express dissent.

### **3. Freedom of Speech and Expression in India:**

Constitutional Perspective Freedom of speech and expression guaranteed under Article 19(1)(a) of the Indian Constitution is the soul of a democratic society. It allows individuals to express opinions, criticize government actions, share ideas, and participate in public debates without fear of retaliation. This right ensures transparency, accountability, and the free exchange of thoughts, which are essential for the healthy functioning of democracy. Without freedom of expression,



democracy loses its meaning and becomes merely a formal structure without real public participation. This loss of faith damages democratic participation because people hesitate to approach authorities, file complaints, or cooperate in legal processes. A democracy cannot function effectively if its citizens fear the very institutions meant to protect them.

Moreover, democracy thrives on dissent and debate. Constructive criticism is essential for reform and progress. However, when custodial violence becomes frequent or goes unpunished, it creates an environment where dissent is perceived as risky. Individuals start practicing self-censorship to avoid confrontation with State power. This culture of silence is extremely harmful because it suppresses diversity of opinion and weakens public discourse.

Thus, custodial violence indirectly nullifies Article 19(1)(a) by making its exercise dangerous. A right that exists only on paper but cannot be exercised without fear loses its practical value. Therefore, protection against custodial violence is essential for the meaningful realization of freedom of speech and expression.

#### **4. Custodial Violence as a Tool of Censorship**

Censorship is commonly understood as a formal restriction imposed by the State on speech, publications, or expression. However, censorship can also exist in informal and indirect forms. Custodial violence represents one such informal mechanism where suppression is achieved not through law but through intimidation and fear. When police brutality is normalized or ignored, it sends a message that questioning authority can have serious consequences.

Victims of custodial violence are often targeted because they challenge power, possess sensitive information, or refuse to comply with illegal demands. This transforms violence into a method of silencing. Even those who are not directly affected become cautious after witnessing such incidents. The fear of detention, torture, or harassment discourages citizens from exercising their constitutional rights.

This form of censorship is more dangerous than legal censorship because it is invisible and unaccountable. There is no written order, no official ban, and no transparent process. Instead, suppression occurs through abuse of power. Such practices corrode democratic values and normalize authoritarian behavior within institutions that are meant to protect citizens.



Custodial violence therefore acts as a psychological barrier to free speech. It conditions society to remain silent, obedient, and passive. This silent censorship weakens public discourse, suppresses dissent, and damages the democratic character of the State.

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### **5. Judicial Approach: Role of the Indian Judiciary**

The Indian judiciary has played a significant role in recognizing custodial violence as a serious violation of fundamental rights. Through progressive interpretation of Article 21, the Supreme Court has expanded the scope of the right to life and personal liberty to include protection against torture and inhuman treatment.

In *D.K. Basu v. State of West Bengal* (1997), the Supreme Court laid down detailed guidelines to prevent custodial torture and deaths. The Court acknowledged that custodial violence is a matter of grave concern and emphasized that torture in custody is an assault on human dignity. It mandated safeguards such as arrest memos, medical examinations, and the right to inform relatives. This judgment remains a landmark in protecting the rights of arrested persons.

In *Nilabati Behera v. State of Orissa* (1993), the Court held that compensation could be awarded for custodial deaths as a remedy for violation of fundamental rights. This case established the principle that the State is accountable for the actions of its officials and cannot escape responsibility by claiming sovereign immunity.

Similarly, in *Prakash Kadam v. Ramprasad Vishwanath Gupta* (2011), the Court took a strong stand against fake encounters and custodial killings, stating that such acts amount to murder and must be punished severely. The judgment reinforced the idea that rule of law cannot be sacrificed in the name of maintaining order.



The judiciary has also recognized the chilling effect of State violence on fundamental freedoms. Although not always directly linked with Article 19, the Court has repeatedly emphasized that fear, intimidation, and abuse of power weaken democratic rights. Judicial interventions show that custodial violence is not just a law-and-order issue but a constitutional crisis that demands strict scrutiny.

However, despite progressive judgments, implementation remains weak. Delays in investigation, lack of independent inquiry, and institutional protection of accused officials reduce the effectiveness of judicial safeguards. Therefore, the judiciary's role must be supported by administrative and legislative reforms to ensure real accountability.

#### **6. International Perspective on Custodial Violence and Free Expression:**

At the international level, custodial violence is recognized as a violation of basic human rights. The Universal Declaration of Human Rights, 1948, under Article 5, clearly states that no one shall be subjected to torture or cruel, inhuman, or degrading treatment or punishment. This principle forms the foundation of global human rights law.

The International Covenant on Civil and Political Rights (ICCPR), to which India is a party, also prohibits torture under Article 7 and guarantees freedom of expression under Article 19. These provisions show that protection against torture and freedom of speech are interconnected. A society that tolerates custodial violence cannot genuinely protect free expression.

The United Nations Convention Against Torture (UNCAT) specifically focuses on preventing torture and ensuring accountability. Although India has signed the Convention, it has not yet ratified it. This reflects a gap between international commitments and domestic implementation. Ratification would strengthen India's legal framework against custodial violence and enhance institutional accountability.

International human rights bodies have repeatedly emphasized that custodial violence creates a climate of fear that suppresses dissent and weakens democratic participation. Countries that fail to control police brutality often experience restrictions on civil liberties, even if such restrictions are not formally written into law.

Thus, the international perspective reinforces the argument that custodial violence and suppression of free expression are deeply connected. Preventing torture is not only about protecting physical integrity but also about safeguarding democratic freedoms and human dignity.



## **7. Challenges in Preventing Custodial Violence in India:**

Despite constitutional safeguards and judicial activism, custodial violence continues to persist in India due to several structural and institutional challenges. One of the major problems is the absence of a specific anti-torture legislation. Although torture is prohibited under various provisions of criminal law and constitutional interpretation, there is no comprehensive statute that clearly defines custodial torture and prescribes strict punishment. This legal vacuum weakens accountability and allows perpetrators to escape effective prosecution.

Another serious challenge is the culture of impunity within law enforcement agencies. Police officials often enjoy institutional protection, and complaints against them are rarely investigated International partially. Victims and their families face intimidation, social pressure, and procedural hurdles, which discourage them from pursuing justice. This environment of fear reinforces silence and indirectly supports censorship by discouraging individuals from raising their voices against injustice.

Lack of independent investigation mechanisms is also a major obstacle. In most cases, inquiries into custodial violence are conducted by police officers themselves, which creates a conflict of interest. Without independent oversight, transparency and fairness in investigations cannot be ensured.

Further, poor training and awareness among police personnel regarding human rights standards contribute to custodial abuse. Law enforcement often prioritizes confession-based investigation rather than evidence-based methods, increasing the risk of torture and coercion.

Judicial delays and lengthy trial processes also weaken the deterrent effect of law. When cases of custodial violence take years to conclude, public confidence in the justice system diminishes. This slow justice indirectly strengthens authoritarian tendencies and normalizes suppression of dissent through fear.

## **8. Suggestions and Reforms:**

To effectively address custodial violence, India must adopt a comprehensive and rights-oriented approach. First, there is an urgent need to enact a specific anti-torture law in line with international standards. Such legislation should clearly define torture, provide stringent punishment, and establish independent mechanisms for investigation and prosecution.

Second, India should ratify the United Nations Convention Against Torture (UNCAT). Ratification would demonstrate the country's commitment to international human rights norms and strengthen domestic accountability systems.



Third, independent oversight bodies should be established at the national and state levels to investigate complaints of custodial violence. These bodies must function autonomously, free from police or political influence.

Fourth, police reforms must be implemented seriously. Training programs should emphasize human rights, constitutional values, and modern investigative techniques. The focus should shift from confession-based policing to scientific and evidence-based investigation.

Fifth, the use of technology such as CCTV cameras in police stations and interrogation rooms should be made mandatory and effectively monitored. Transparency through technology can significantly reduce the incidence of torture and abuse.

Sixth, victims of custodial violence and their families must be provided with legal aid, psychological support, and timely compensation. A victim-centric approach is essential to restore faith in the justice system.

Lastly, awareness campaigns should be conducted to educate citizens about their rights in custody. An informed society is less likely to accept abuse of power and more capable of resisting silent censorship.

## **9. Conclusion:**

Custodial violence is not merely a problem of physical abuse but a deep constitutional crisis that threatens the foundations of democracy. When State authorities misuse their power to intimidate and torture individuals, they do not only violate Article 21 but also indirectly suppress freedom of speech and expression guaranteed under Article 19(1)(a). In this way, custodial violence becomes an invisible form of censorship, operating through fear rather than law.

A democracy cannot survive on silence and submission. It requires active participation, open criticism, and fearless expression of ideas. Custodial violence destroys this environment by creating insecurity and discouraging citizens from questioning authority. It erodes public trust in institutions and normalizes authoritarian behavior within the framework of law enforcement.

Therefore, preventing custodial violence is essential not only for protecting individual rights but also for preserving democratic ethos. Legal reforms, judicial vigilance, police accountability, and public awareness must work together to eliminate this menace. Only then can freedom of speech and expression truly flourish, and democracy can function in its real spirit.



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