

A Critical Study on Custodial Torture in India with Special Reference in Chennai

Rishi Vardhan. S

B.A., LLB(HONS), Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS), Chennai - 77.

ABSTRACT:

Torture and violence are known since ancient times. The torture essentially is the cruelty committed by the persons in power over the helpless and the weak. Custodial torture means torture in police custody, jails or in custody of other governmental authorities. It is gross negation of the human rights and is violative of the article 21 of the constitution of India. To find out the various methods of torture employed in custody, present prospective study was conducted in the Department of Forensic Medicine and Toxicology, Govt. Medical College, Amritsar. Over a study period of two years, a total of 21 (16 male and 5 female) patients of alleged custodial torture, who were admitted in the emergency of Shri Guru Nanak Dev Hospital associated with Govt. Medical College, Amritsar were studied in detail. The maximum no of cases, 15 (71.4%) were from jail custody, 5 (23.8%) were in police custody and 1 (4.8%) patient was a victim of domestic violence who was detained in her own house. The maximum no of patients of custodial torture (33.3%) were in the age group of 21-30 years. 9.5% of the custodial patients suffered physical torture, 57.1% of the patients suffered mental torture and 33.3% of the patients were victims of both physical and mental torture. This study outlines the various methods of torture employed in custody with the aim of creating awareness in the society about the menace of torture and to help in the prevention of torture by the authorities.

KEYWORDS: Custodial torture, methods of torture, prevention of torture.

INTRODUCTION:

Torture is the intentional infliction of severe mental or physical pain or suffering by or with the consent of the state authorities for a specific purpose. It is often used to punish, obtain information or a confession, take revenge on a person or create terror and fear within a population. Torture of a fellow human being by another human being is essentially an instrument to impose the will of strong over the weak. The aim of application of torture is to dehumanize the victim. Even in the modern era of civilized society, torture continues to be the handiest implement to terrorize and vanquish the weak. Custodial torture is a matter of grave concern and is perhaps one of the worst crimes in a civilized society governed by the rule of law. It is further aggravated by the fact that this torture is committed by the persons who are supposed to be the protectors of the citizens. It is committed under the shields of “uniform” and “authority” within confines of a police station, lock up or prison, where the victim is totally helpless. The practice of torture has been widespread and predominant in India since ages. It has become a ‘normal’ and ‘legitimate’ practice of police functioning all over the country. In the name of investigating crimes, extracting confessions and punishing individuals by the law enforcement agencies, torture is inflicted upon the people in the form

of cruel, inhuman and degrading treatment, grossly derogatory to the dignity of the human person. Torture is custody out the basic rights of the citizens and poses a serious threat to an orderly civilized society. The study aims to formulate reasons and statistics of custodial torture and what can be done to pacify such custodial torture.

OBJECTIVES:

- To provide awareness about custodial torture
- To highlight the augmenting trends of custodial torture and fake encounters in recent decades.
- To highlight statues and acts present to curb such atrocity.
- To provide punishment for torture inflicted by public servants or any person inflicting torture with the consent or compliance .

REVIEW OF LITERATURE:

Police encounters and custodial death has been a threat to the justice system. The personnel who are granted prerogatives by the state ironically squander it. Custodial deaths and fake encounters have been a major issue though haven't been given adequate attention nor been addressed. Even after the Supreme court guidelines, there was a significant rise in custodial death. **(Sk)** Various crimes like Rape, Illegal Detention, or harassment are being conducted on the prisoners in the custody. Right of a person in custody guidelines have been formulated still there is much jeopardy. **(Aston)** Police are slaughtering justice and not following the due course of law. The statistical study shows a rampant and clear picture of the custodial violence in the country and how it can be curbed is the most perturbing problem. **(Amnesty International)** when the rights are misused by the Police force it turns into brutality and the killings are not the encounters but the cold-blooded murders. It is equally a gruesome crime on the part of the policeman to take the life of a person deliberately by acting himself as an adjudicator without the proper trial in the Courtroom and the same has been mentioned in Article 6(1) of the International Covenant on Civil and Political Rights. **(Heath)** A Quote by Justice A.N Mulla that is being reiterated all over the world, was given nearly half a century ago. The article elucidates to the readers how the powers that were attributed to the public servants of our country to serve the nation are being exploited and are deemed as a license to take away the life of the offender on their whims and fancies without ensuring the culprit's fair trial in the Court of Law. **(Lokaneeta, *Transnational Torture: Law, Violence, and State Power in the United States and India*)** It stresses the need for the reformation of existing laws and formulation of the novel ones to ensure that the alleged offenders do not become the victims of Police Custodial Torture and Brutality and the pure soul of justice is not blemished by the inhuman behavior of the police personnel. **(Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*)** Criminal Jurisprudence in India upholds the notion of innocent until proven guilty, which is also entailed in Article 14(2) of the International Covenant on Civil and Political Rights, for the obvious reasons as the punishment that is awarded to the criminal is very fatal, therefore a proper investigation is required before executing or punishing the offender. **(Mathew)**

The essence of Criminal Law is Mens Rea i.e., guilty mind, one cannot be punished under the criminal law until he has the guilty mind or wrong intention. Similarly, if we look at the cases of Fake Encounters and Custodial Deaths, we can find the vestiges of mens rea, therefore both are equally criminal offenses leaving no distinction between them and other criminal offenses. **(Chakraborty)** A few decades back an act named, Protection of Human Rights, 1993 was passed, and subsequently, Nation Human Rights

Commission was established to prevent the arbitrary barbarity of the policemen on the criminals and to protect their basic rights. **(Bajoria)** According to Hon'ble Justice Krishna Iyer, who is an avid proponent of human rights stated in one of his judgments – Who will police the Police? Custodial violence and the subsequent deaths have jeopardized the basic human rights laws to such an extent that it has become a blot on our justice system. **(Heath)** An eminent writer of the Deccanherald, Murali Kannan mentions in his blog the atrocity of police has taken a toll on society. Hidden in the garb of legal immunity, they misuse the prerogative provided to them. The recent case of death of father and son in Tamil Nadu in police custody has incited people against the wrongdoings that have been prevalent in the society. **(Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*)** The question which is raised here is how the unscrupulous police manhandle the person in custody in derogation of their fundamental rights. The custodian of people has itself become the perpetrator. He also stated that though many statutes and conventions are passed to prevent custodial violence yet it is done so clandestinely that even the courts become biased. **(Aston)** In another article based on the same line, author Joshua N. Aston in his book 'Torture behind the bars' throws light on the accountability of the police force and how can reforms be brought to curb the brazen act of custodial violence. **(Shah)** The crime committed by police be dealt with in the same way as any civilian because no entity has the right to derogate the fundamental right of any person as enshrined in Article 21 of the Indian Constitution. **(Gudjonsson and Great Britain. Royal Commission on Criminal Justice)** The further enumerates that the custodial torture or the ill-act by the police is considered to be moral and as a form of reformatory justice, though the exploitation of the persons is generally condoned. **(Krishna Kumar)** The police authorities work under a lot of stress as they have to handle a lot of cases at the same moment and also under the pressure to finish certain volume of cases within a particular time frame. In our justice system, an accused is presumed to be innocent until and unless he proven guilty for the commission of an offence, beyond reasonable doubts and proving an accused guilty requires evidence against him, which they must collect against the accused. **(Carver and Handley)** Failure in achieving the results may lead to the officer being transferred, which creates a lot of pressure in the minds of the police officers due to which they Resort to techniques which involve torture against the accused in order to get confession from him. **(Ramakrishnan)** As the accused can be kept custody only for the period of 24 hours within which the police have to obtain a lot of vital information required by the prosecution, they offer new shortcuts during investigation to obtain maximum information. **(Bajoria)** Some police officials believe that punishing the criminals is the only way through which the criminals can be prevented from committing more crimes. They say prisons no more have a deterrent effect on criminals as they remain happy there. **(Sk)** They prison officials believe in the efficacy of third degree treatments while dealing with criminals particularly those who have committed serious crimes such as murders and rapes and they think they deserve the Torture. **(Lokaneeta, *The Truth Machines: Policing, Violence, and Scientific Interrogations in India*)**

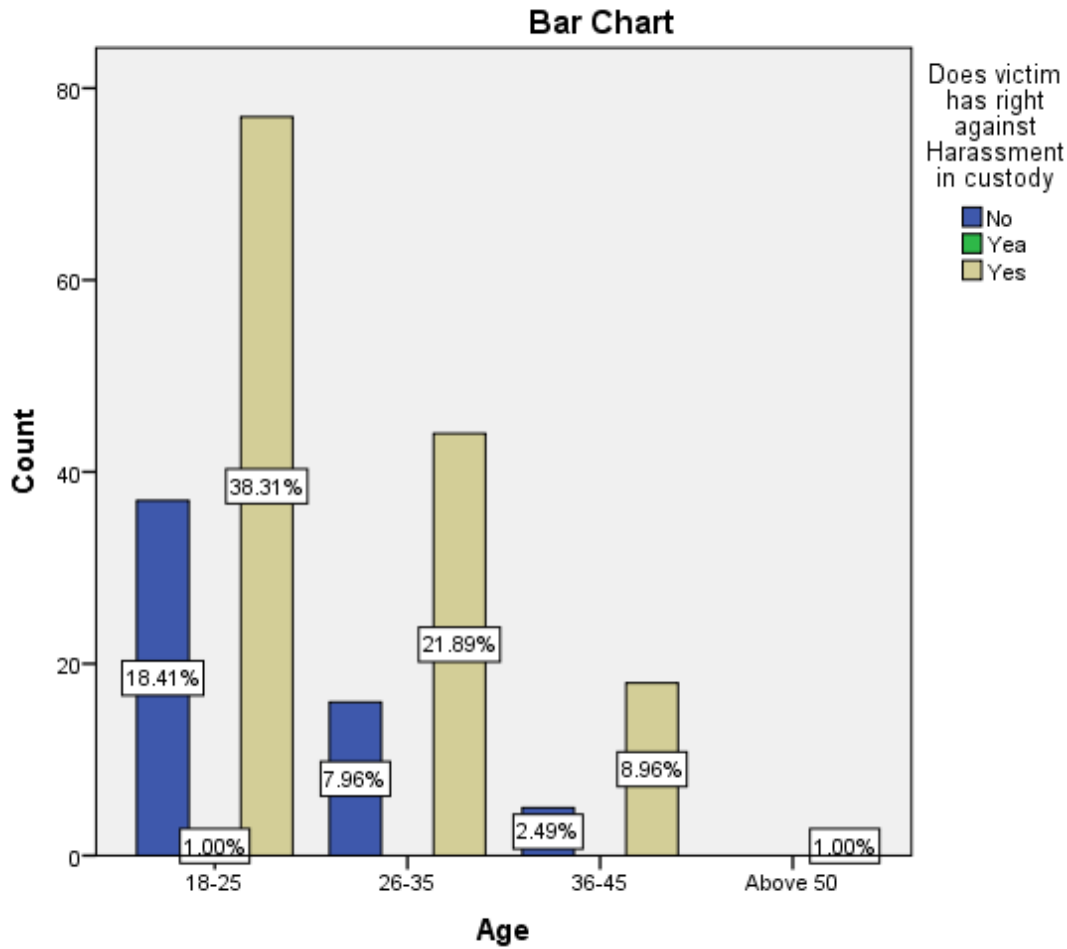
RESEARCH METHODOLOGY:

This study is Empirical method with a convenient sampling method to do this non-doctrinal study. The research method followed here is descriptive research. The SPSS software by IBM was used to calculate the descriptive statistics. A total of 200 samples have been taken out of which is taken through a convenient sampling method. The sample frame taken by the researcher is through the offline mode. The independent variable taken here is age, occupation, gender, educational qualification, and marital status. Rate the awareness about Custodial Torture. Police can beat Victim in custody. Due to the intolerance by the police

toward the psychological needs and issues of the person in custody, it might lead to. Does victim has right against Harassment in custody. The cause of custodial death in India, because The statistical data used by the researcher is graphical representation. The sample size is 200 and the sampling method is a convenient sampling method.

ANALYSIS

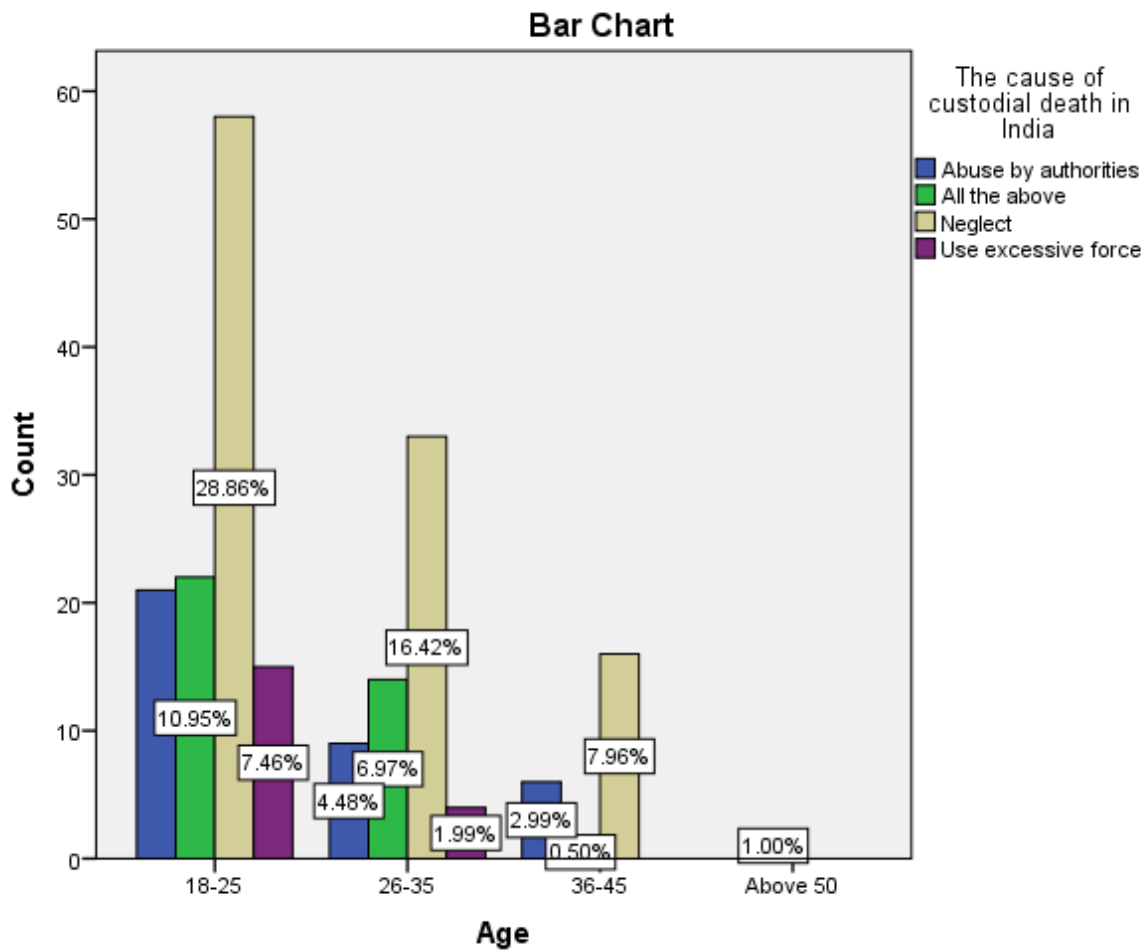
FIGURE:1



LEGEND:

Figure 1 shows that dependant variable Age were compared with Independent variable, does victim has right against harassment in custody.

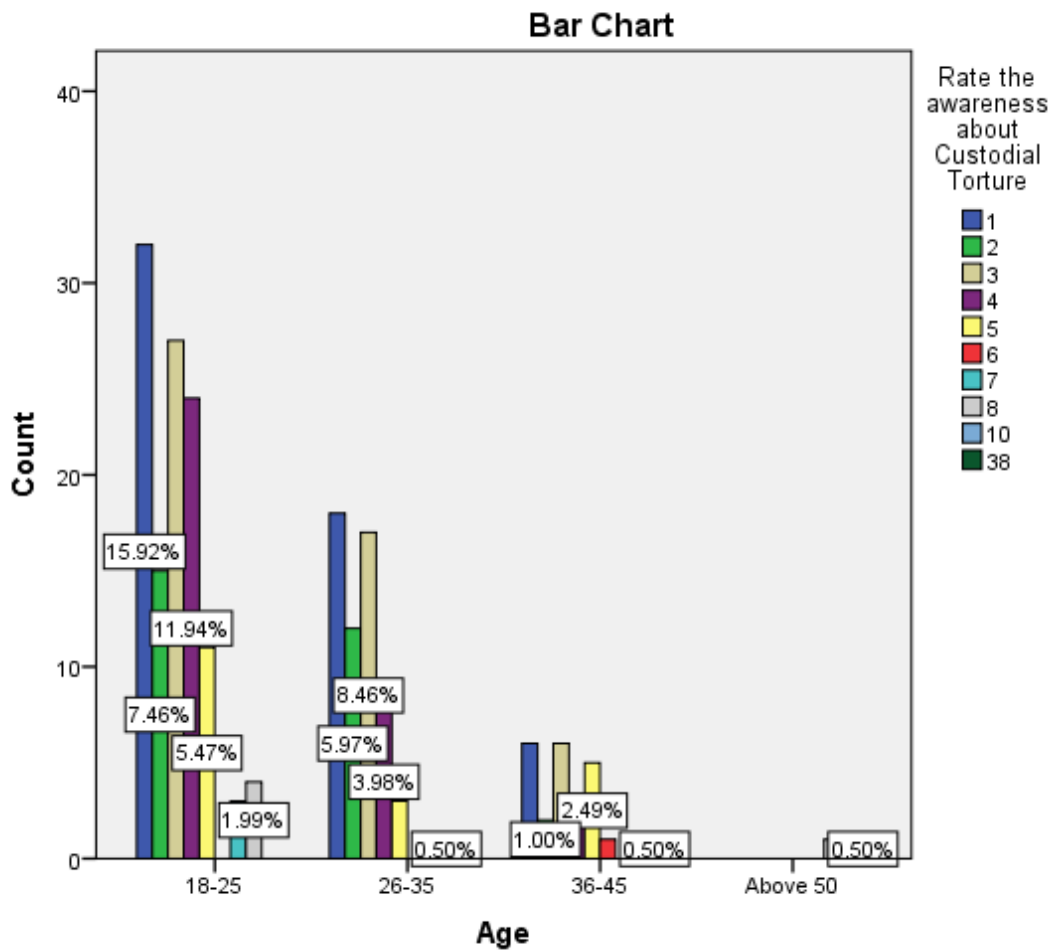
FIGURE:2



LEGEND:

Figure 2 shows that dependant variable Age were compared with Independent variable, the cause of custodial death in India.

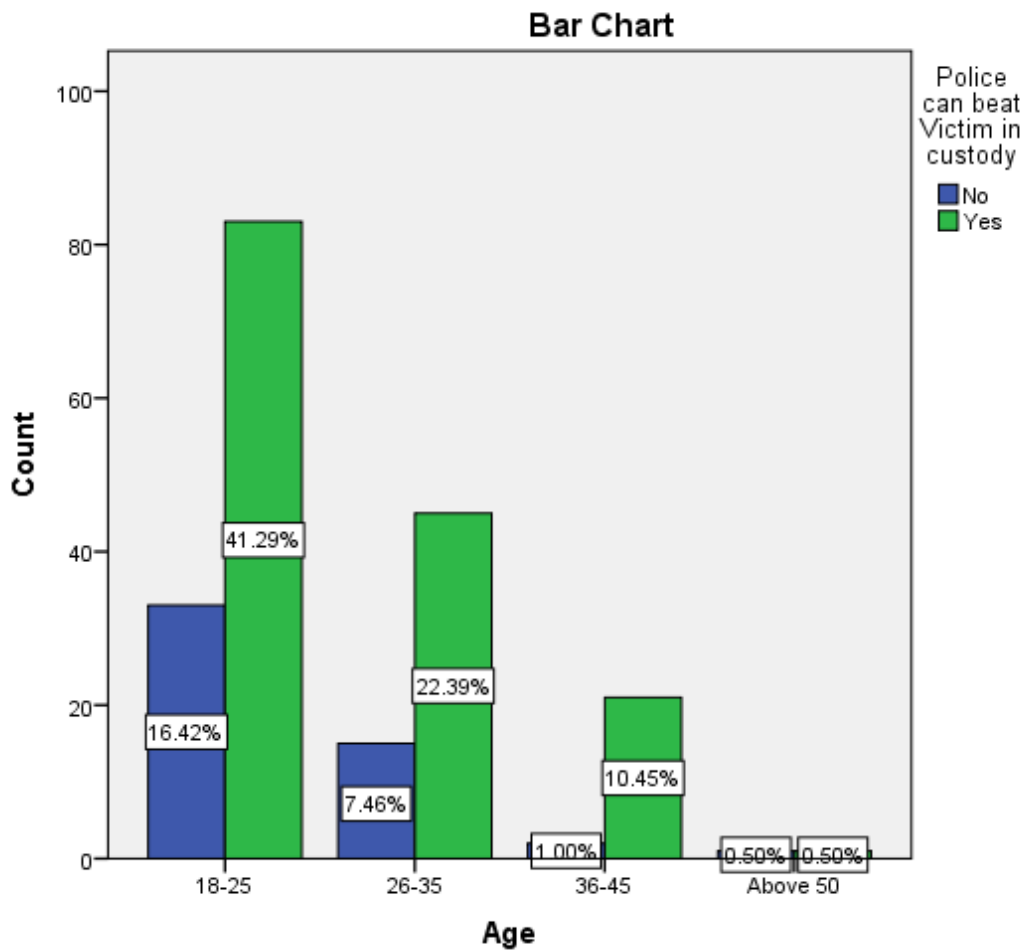
FIGURE:3



LEGEND:

Figure 3 shows that dependant variable Age were compared with Independent variable, the cause of custodial death in India.

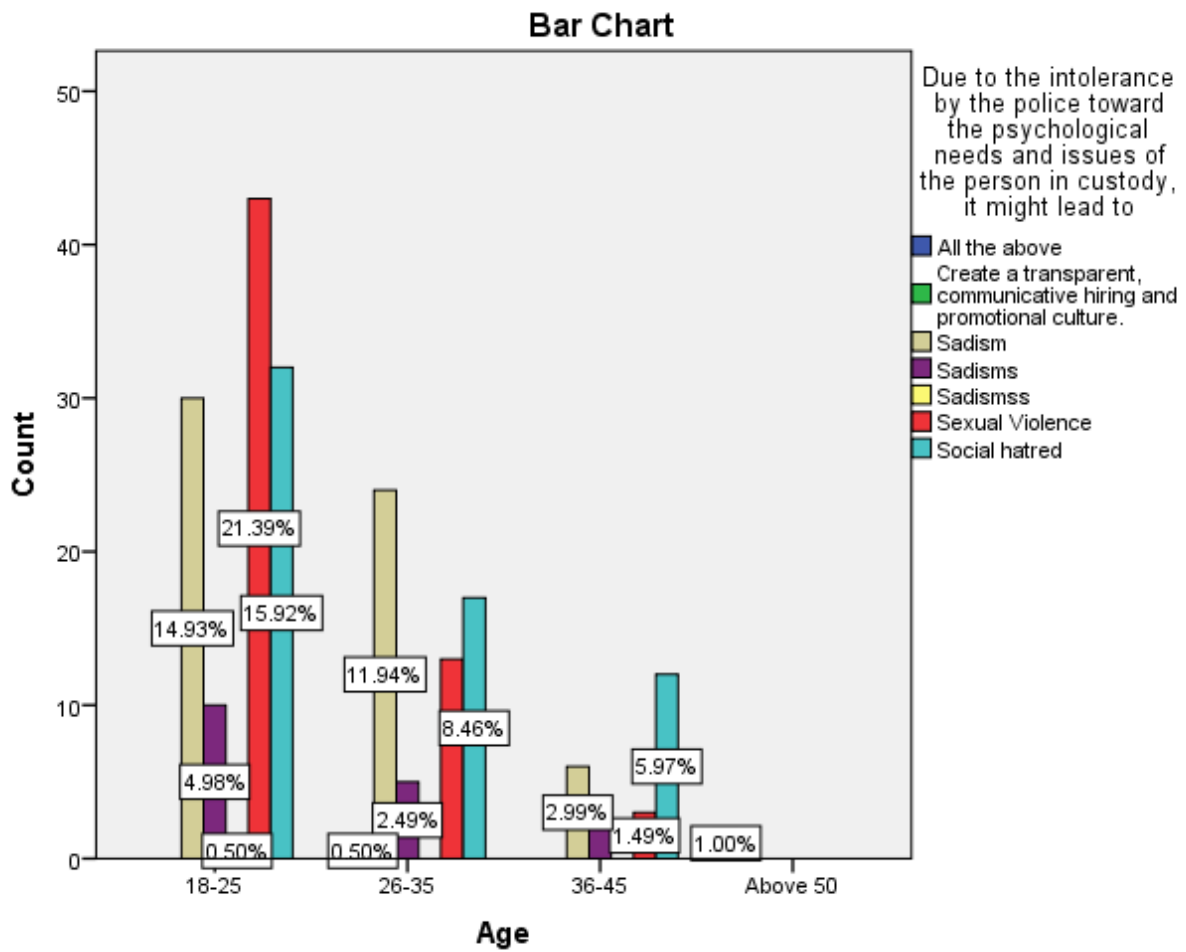
FIGURE:4



LEGEND:

Figure 4 shows that dependant variable Age were compared with Independent variable, the police can beat victim in custody.

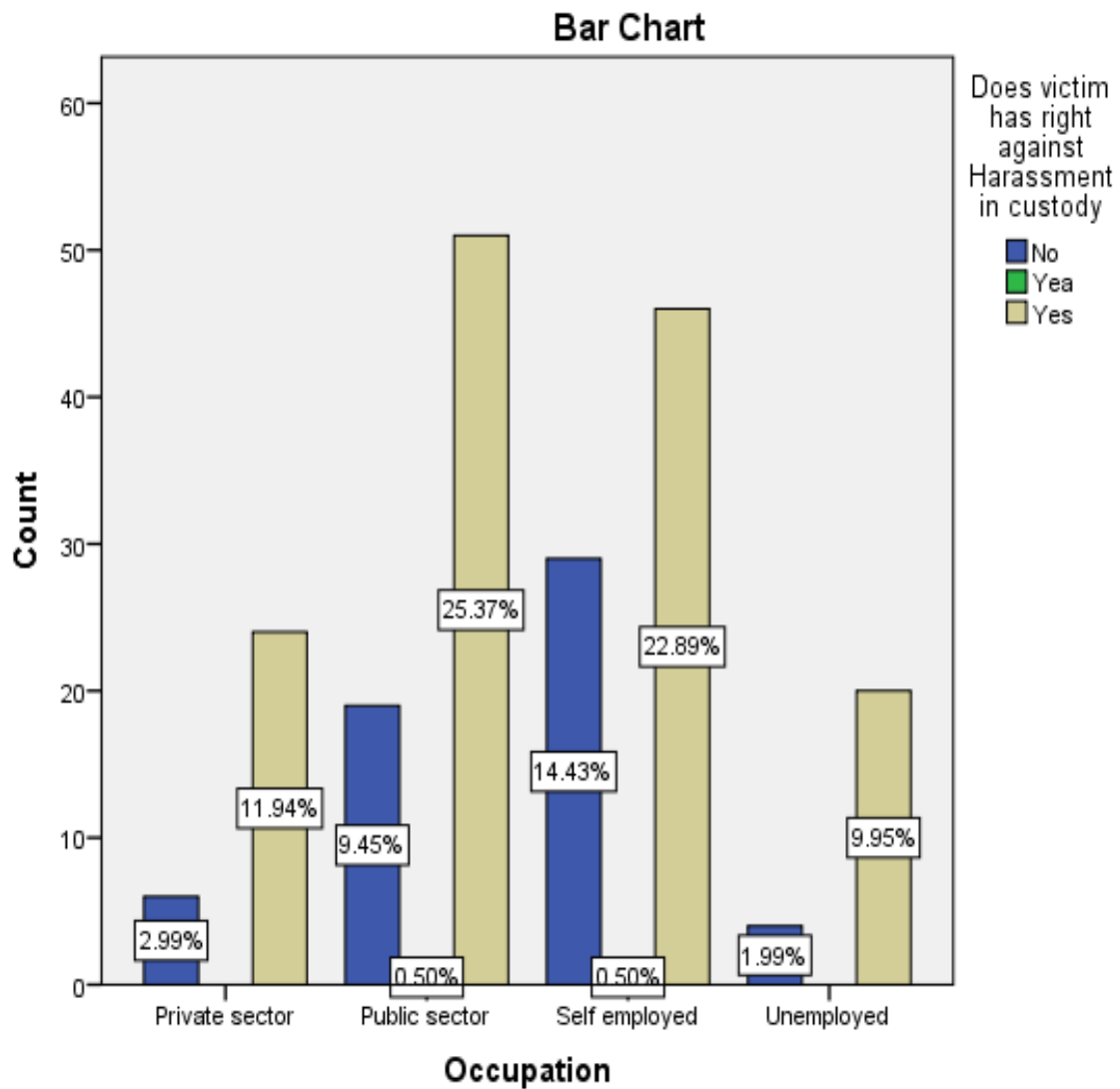
FIGURE:5



LEGEND:

Figure 5 shows that dependant variable Age were compared with Independent variable, due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it.

FIGURE:6

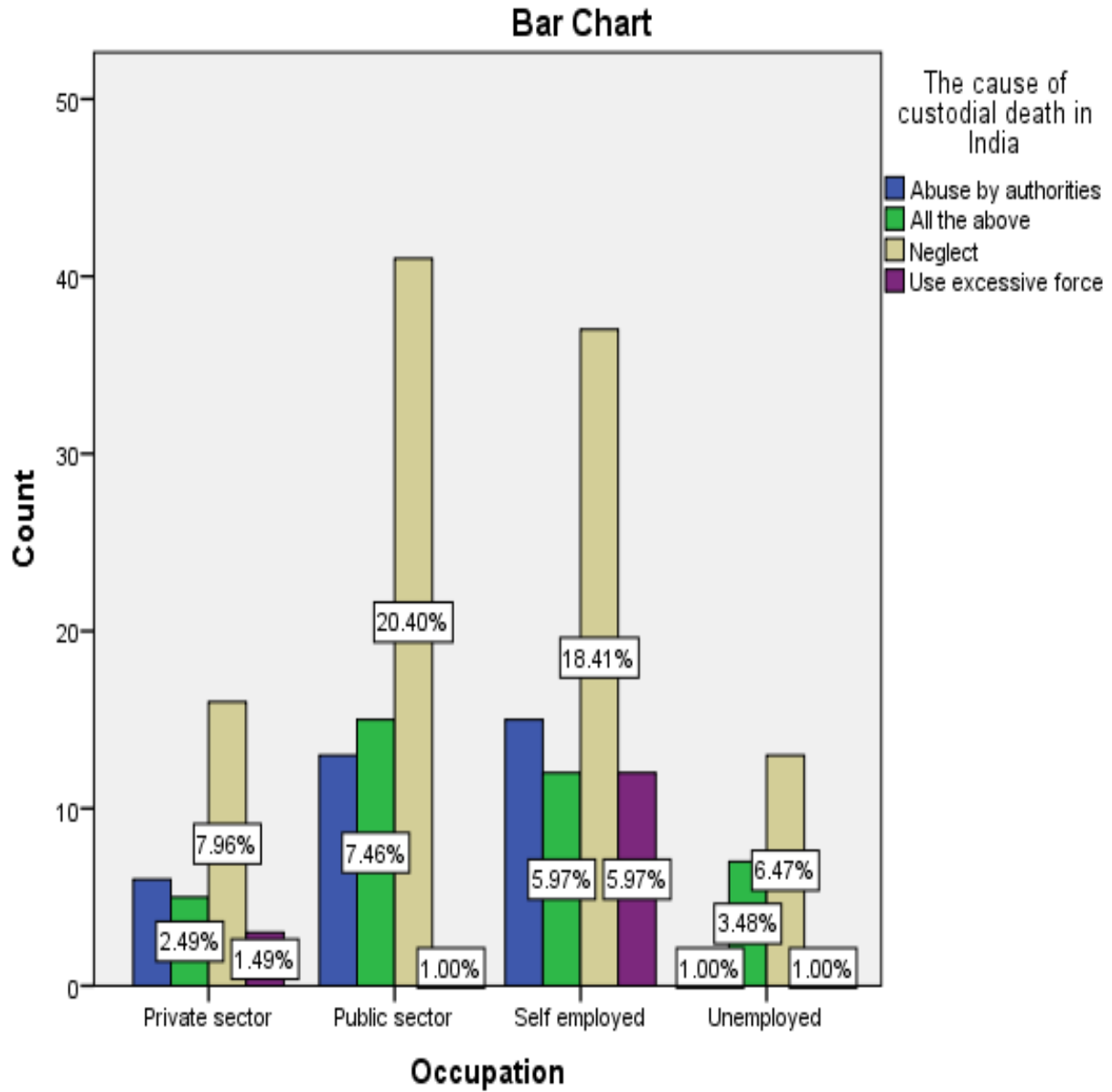


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LEGEND:

Figure 6 shows that dependant variable occupation were compared with Independent variable, does victim has right against harassment in custody.

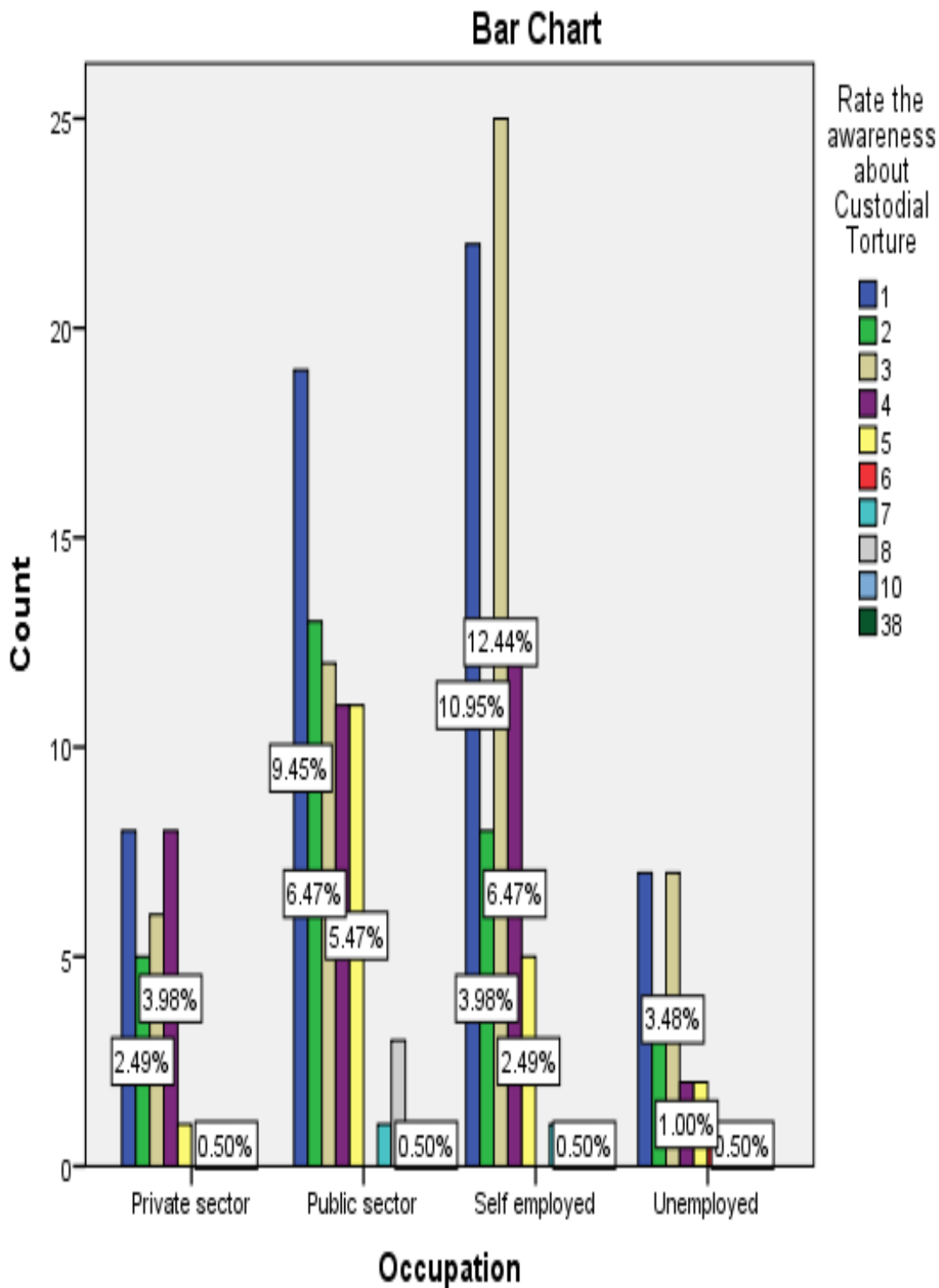
FIGURE:7



LEGEND:

Figure 7 shows that dependant variable occupation were compared with Independent variable, the cause of custodial death in India.

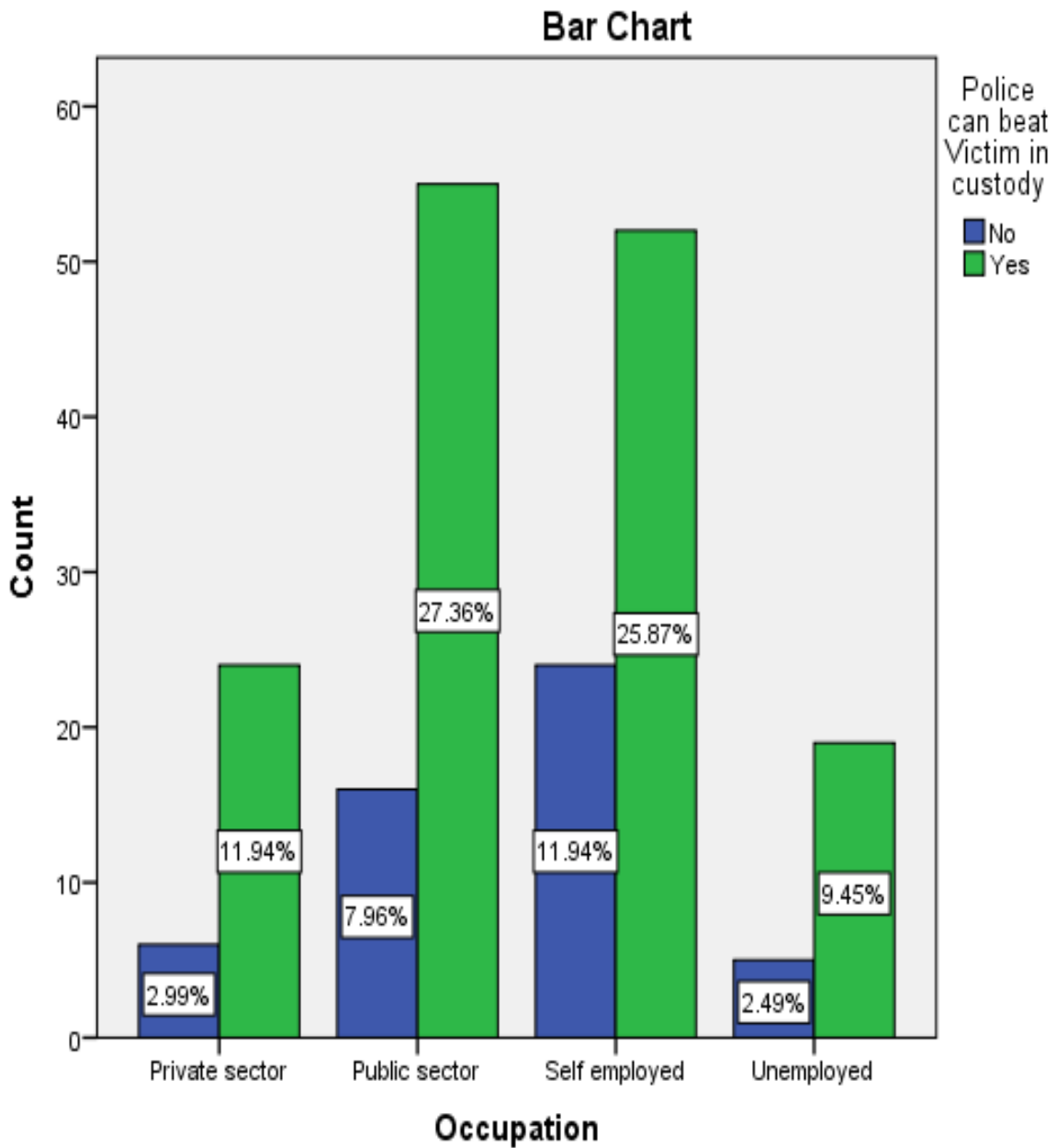
FIGURE:8



LEGEND:

Figure 8 shows that dependant variable occupation were compared with Independent variable, rate the awareness about custodial torture.

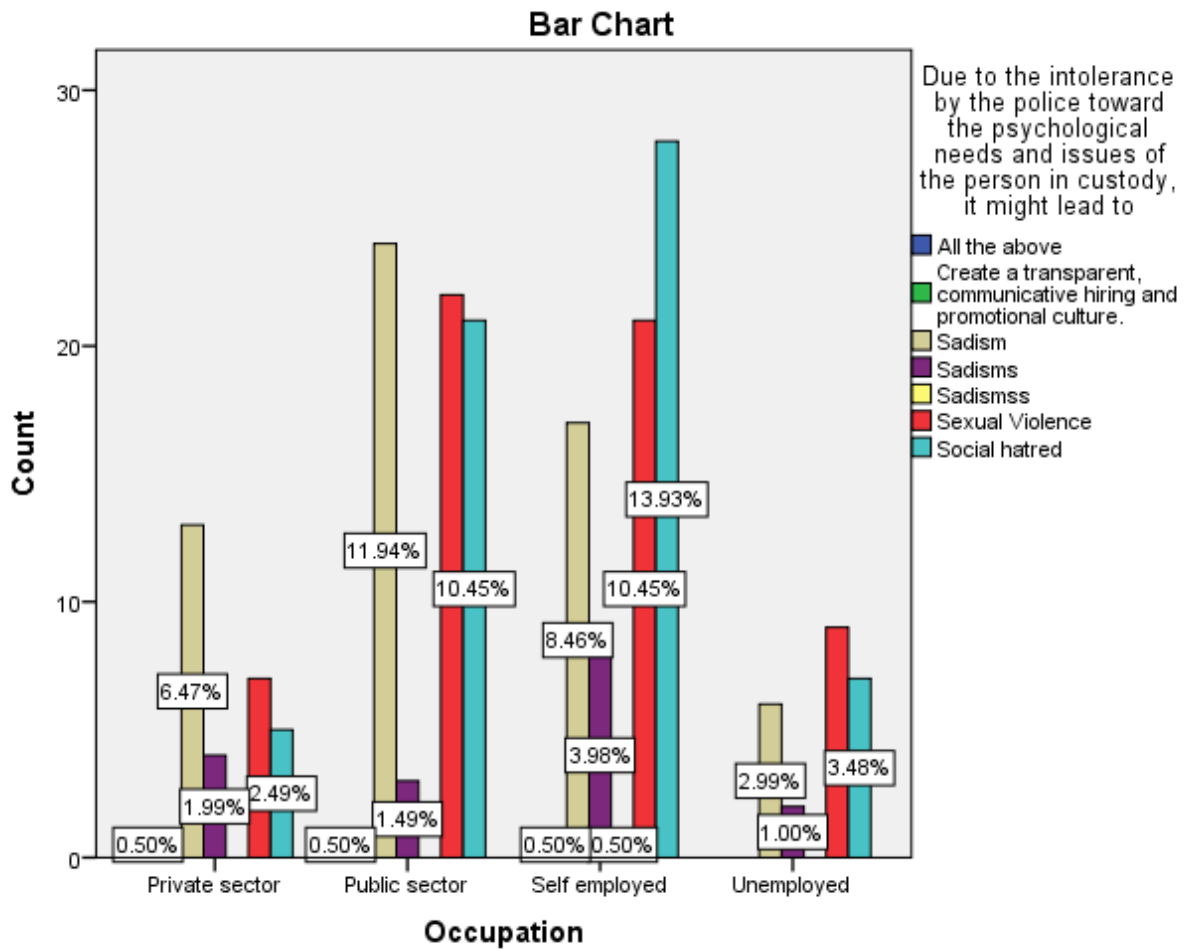
FIGURE:9



LEGEND:

Figure 9 shows that dependant variable occupation were compared with Independent variable, the police can beat victim in custody.

FIGURE:10



LEGEND:

Figure 10 shows that dependant variable occupation were compared with Independent variable, due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it.

RESULTS:

The cluster graph implies that nearly 38.31% of age 18-25 years are saying that yes, victim has right against harassment in custody (Figure 1) The cluster graph implies that nearly 28.86% of age 18-25 answered neglect for the cause of custodial death in India.(Figure 2)

The cluster graph implies that nearly 15.92% of age 18-25 answered rating 1 for the awareness about custodial torture. (Figure 3) The cluster graph implies that nearly 41.91% of age 18-25 answered yes for the police can beat victim in custody. (Figure 4) The cluster graph implies that nearly 21.39% of age 18-25 answered that sexual violence for due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it. (Figure 5) The cluster graph implies that nearly 25.37% of Public sector working respondent were saying that yes, victim has right against harassment in custody (Figure 6) The cluster graph implies that nearly 20.40% of them from the public sector answered neglect for the cause of custodial death in India.(Figure 7) The cluster graph implies that nearly 12.44%

of from self employed answered that rating 1 for the awareness about custodial torture. **(Figure 8)** The cluster graph implies that nearly answered yes for the police can beat victim in custody. **(Figure 9)** The cluster graph implies that nearly 13.93% were from self employed answered that sexual violence for due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it. **(Figure 10)**

DISCUSSION:

The cluster graph states that most of the respondents are supporting the statement which might be because they might know that the victim has right against harassment in custody **(Figure 1)** The cluster graph states that most of the respondents are supporting the statement which might be neglect for the cause of custodial death in India. **(Figure 2)** The cluster graph states that most of the respondents are supporting the statement which might be because they might know that the awareness about custodial torture. **(Figure 3)** The cluster graph states that most of the respondents are supporting the statement for the police can beat victim in custody. **(Figure 4)** The cluster graph states that most of the respondents are supporting the statement that sexual violence for due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it. **(Figure 5)** The cluster graph states that most of the respondents are supporting the statement which might be neglect for the cause of custodial death in India. **(Figure 6)** The cluster graph states that most of the respondents are supporting the statement which might be neglect for the cause of custodial death in India. **(Figure 7)** The cluster graph states that most of the respondents are supporting the statement which might be because they might know that the awareness about custodial torture. **(Figure 8)** The cluster graph states that most of the respondents are supporting the statement for the police can beat victim in custody. **(Figure 9)** The cluster graph states that most of the respondents are supporting the statement that sexual violence for due to the intolerance by the police toward the psychological needs and issues of the person in custody it might lead to it. **(Figure 10)**

CONCLUSION :

The Article 21 of the constitution of India guarantees all persons the fundamental rights of life and personal liberty. The custodians should respect the human rights of the persons in custody. They should also abide by their legal duty to provide necessary amenities for the health and safety of the individuals. The prisoners should be provided proper medical care and humane living conditions. Undoubtedly, the incidents of custodial torture are a blot on the face of human society. However, it is heartening to note that in the present study, the incidence of custodial torture has shown a decreasing trend. The reasons for this are the activism of the National Human Rights commission, media awareness regarding custodial torture and deaths, general public awareness, the constant ghts of various NGO's against the custodial torture and the last but not the least, the role of medical fraternity in the proper documentation of various torture cases. The inmates of prisons are prone to various diseases due to unhealthy, crowded and stressful living conditions and they also suffer from various mental health problems due to anxiety, depression and lack of interaction with their families. The authorities should improve the living conditions of the prisoners and do periodic psychological counseling to prevent violent behavior in them. The doctor has a pivotal role in the diagnosis and treatment of these physical and mental conditions. The role of doctor in the suppression of torture cannot be overemphasized. The forensic pathologist is in a unique position to foster the prevention of torture. By effectively investigating and documenting medical evidence in cases of custodial torture, he

can greatly improve communication between health professionals and the regulatory authorities as well as facilitate the proper evaluation of information on the subject

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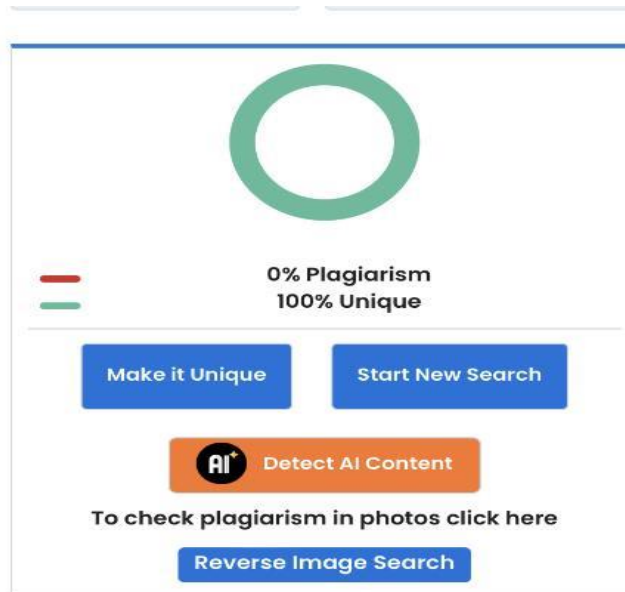
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Introduction:

Torture is the intentional infliction of extreme mental or actual torture or enduring by or with the assent of the state experts for a specific reason. It is frequently used to rebuff, get data or an admission, get back at an individual or make dread and dread inside a populace. Torture of an individual person by one more individual is basically an instrument to force the desire areas of strength for of the weak. The point of utilization of torture is to dehumanize the person in question. Indeed, even in the cutting edge time of cultivated society, torment keeps on being the handiest carry out to threaten and vanquish the weak. Custodial torment involves grave concern and is maybe quite possibly of the most obviously terrible wrongdoing in an enlightened society represented by law and order. It is additionally disturbed by the way that this torture is committed by the people who should



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Abstract:

Torture and violence are known since antiquated times. The torture basically is the brutality committed by the people in control over the defenseless and the feeble. Custodial torture implies torment in police guardianship, prisons or in care of other legislative specialists. It is gross nullification of the basic liberties and is violative of the article 21 of the constitution of India. To find out the different strategies for torment utilised in care, present imminent review was directed in the Branch of Measurable Medication and Toxicology, Govt. Clinical School, Amritsar. Over a review time of two years, a sum of 21 (16 male and 5 female) patients of supposed custodial torture, who were conceded in the crisis of Shri Master Nanak Dev Clinic related with Govt. Clinical School, Amritsar were concentrated on exhaustively. The most extreme no of cases, 15 (71.4%) were from prison care, 5

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