

## Lex Lexicon Journal

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### CUSTODIAL DEATHS - LIFE LOST IN HANDS OF POLICE

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#### ABSTRACT

*The Indian Constitution guarantees various fundamental rights to a person held in custody under Article 20, 21, and 22. But when a person dies in custody, be it judicial or police, it conveys dishonour to our constitution. Such incidents put a serious question before the authority about “the violation of fundamental rights of the person in custody,” “the need for introducing new legislation,” and “state’s responsibility to stop these offences.” The custodial deaths are increasing day by day; however, the conviction rate is still zero. It presents an urgent requirement to carefully examine systemic problems rooted in a culture of impunity, corruption, discrimination, and eroding legal justice system aggravate to violation of human rights. Therefore, there is a need to balance societal interest and individual human rights in combating offences using a realistic approach. In this research paper, researchers try to define custodial death and its reason, various international instruments, Indian legislature and the landmark judgment of the Supreme Court of India, facts, and figure of custodial deaths in India role of National Human Right Commission. The research paper also attempts to analyze the need for bringing new and robust laws and provisions to stop these heinous crimes of custodial deaths.*

## INTRODUCTION

Custodial torture is globally considered one of the brutal types of human rights violations. The Constitution of India, the National Human Rights Commission, the Supreme Court of India, and the United Nations forbid it. Still, the police throughout the country refuse to obey these institutions. Therefore, a realistic approach has to be used to combat offences of custodial death. Also, there is an urgent need to balance societal interests and individual human rights. Unopposed and unchallenged, it has become a normal and legal practice across the country. In the name of investigating any crimes, extorting confessions, and punishing individuals by law enforcement agencies, the accused is subject to torture and the bona fide petitioners, informant, or complainants amounting to cruelty, inhuman and mortifying treatment, grossly degrading the human dignity. In many cases, these custodial tortures resulted in custodial deaths.

Custodial death is seen as a violation of the fundamental right to life and liberty, i.e., Article 21 that, too, crushes the people's self-respect brutally. Custodial death is a heinous crime in terms of Human Rights Laws too. The incident of custodial death in the name of protecting and maintaining law and order in the society has shocked the people's conscience. The police officials neglected the imposed procedure and provisions to bring merciless cruelty to the accused.

Police officers getting convicted for custodial death is a very rarest incident. The rise in the number of custodial deaths but conviction rate is still zero; it presents an urgent requirement to carefully examine a systemic problem rooted in a culture of impunity, corruption, discrimination and eroding legal justice system aggravate to violation of human rights.

## MEANING AND EXPRESSION

When law enforcement agencies have stopped someone's freedom of movement at any point in time, such as during arrest, prosecution, correctional confinement, or sentencing, this can be defined as Custody.

### **Police Custody vs. Judicial Custody**

Police Custody means a suspect arrested for an offence by the police and detained in a police station. During detention in a police station, which should not be longer than 24 hours<sup>1</sup>, the suspect may be interrogated by the police at that time. According to s. 167<sup>2</sup>, on a magistrate's order, an individual may be detained in police lockup for up to 15 days. ★

Judicial custody means persons held in jail as per the orders of the court. This includes under-trial prisoners and convicts. An under-trial prisoner is in the custody of the Magistrate but is detained in prison. Interrogation of the suspect by the police is not allowed during judicial custody. The court may allow police custody to interrogate the suspect held in judicial custody but be conducted based on the facts produced before the court.

## POSSIBLE REASONS OF CUSTODIAL VIOLENCE AND DEATHS

- In almost every country, police have to perform crucial tasks to maintain peace, order, and harmony. Situations like riots, unrest, terrorist activity, corruption, and other crimes have to be dealt with modest facilities and weapons provided by the government compared to advanced ones used by criminals, making an ordinary policeman handicapped to tackle.

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<sup>1</sup> INDIA CONST., art. 22


<sup>2</sup> Code of Criminal Procedure 1973, no. 2, Acts of Parliament, 1974

- Now, as the rate of growth is much more than the number of police persons in our nation, the burden proportionally increases on individual shoulders. Due to a lack of sufficient time and resources for appropriate investigation, it becomes unavoidable for policemen to use third-degree methods.
- Policemen are made to believe that hardcore criminals doing heinous wrongs can only be dealt with beatings and violence, to make them share crucial information. Officers don't feel any wrong in abusing the wrongdoer and forget the basic human right of suspects.
- In fact, most of us in this society are not willing to be a witness against any crime because we fear and refrain from criminal proceedings and criminals involved, so policemen are left with no option but to extract information from the suspect by any means.
- Even after the presence of several laws and guidelines regarding training and reforming of police personnel, no implementation is done or not taken seriously at all. And there is no supervision on the same hence a violation of powers takes place very frequently.
- Many times mode and pace of the investigation is influenced by external factors like political pressure, societal pressure, pressure by media, etc. and sometimes by internal factors like personal grudges and stereotype mindsets due to which standard code of conduct is ignored by policemen and tends to perform illegal or immoral wrongs with suspects.

## STATISTICAL DATA

The National Crime Records Bureau is a body of the Indian government that gathers and analyze information relating to all crimes as defined under the Indian Penal Code, Special and Local Laws.

Two annual reports, namely —“Prison Statistics India 2017” and “Crime in India 2017,” were released by NCRB on October 20, 2019 which gives the statistical data collected and analyzed by the Board regarding count and type of deaths that happened in custody (judicial and police) throughout the nation.

- Demise of people in judicial custody 

In judicial custody, 1,671 deaths have been reported in the year 2017, out of which 1494 were because of natural reasons and 133 because of unnatural reasons. The reason behind natural death could be sickness (1,373) or ageing (121), heart diseases, lung ailment, and tuberculosis being the most common reasons behind the same.<sup>3</sup>

Percentage of unnatural deaths grew by 15.7 from 2015 when the number of deaths was just 115. These deaths have been further classified into various categories, say: 109 died by committing suicide, nine died because of accidents, five were attacked by prison-mates, and five have been thrashed by outsiders and others.

U.P. secured the most number of natural deaths at 386 in the year 2017, Punjab at 131, and Maharashtra at 111 in tow.

- Demise of people in police custody

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<sup>3</sup> *Prison Statistics India 2017*, NATIONAL CRIME RECORDS BUREAU (October 21, 2019)

In the year 2017, a hundred people lost their lives in police custody were the most common reason was suicide (37) and no or improper medical support (28). Among the nation, Andhra Pradesh had the maximum number of cases at 27.<sup>4</sup>

As per the data of deaths in Indian states for a period of 2013 to 2017, Maharashtra registered 106 deaths, A.P. had 65, Gujarat reported 51, and Telangana had 12. In Maharashtra, out of 106 magisterial or judicial inquiry in 47 cases, 14 were registered, and 19 were charge-sheeted. None of the police personnel was convicted, and no case was reported in any of the seven union territories in the year 2017.

A huge difference in a number of custodial deaths has been observed when comparing data of the National Crime Records Bureau, National Human Rights Commission, and NGO, namely National Campaign Against Torture (NCAT). The reason for such divergence in data can be the way these authorities function and collect the information. Where NHRC shares the statistics monthly in the form of cases registered by them every month, NCRB, on the other hand, depends on the statistics received by state authorities and police across the nation. Data published by NHRC on deaths are classified into judicial and police deaths, but it doesn't share the reason for the same (say suicide, injury, etc.).

On 26 June 2020, NCAT published a report stating an alarming number of 1,723 custodial deaths that happened in the year 2019 only, which means approximately five deaths a day. The count of lives lost in judicial custody and police custody is 1,606 and 117, respectively.<sup>5</sup>

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<sup>4</sup> *Crime in India 2017*, NATIONAL CRIME RECORDS BUREAU (October 15, 2019)

<sup>5</sup> *Annual Report On Torture 2019*, NATIONAL CAMPAIGN AGAINST TORTURE (June 26, 2020)

Despite rules and laws present to prevent custodial violence and protection from the same, we have observed a lot of custodial deaths and brutality by police-persons. It is alarming and agonizing that a very less number of people have been convicted till date, and many states consistently reporting zero convictions every year.

## LAWS AND PROVISIONS

- **INTERNATIONAL ASPECT**

**Article 5** of the **Universal Declaration of Human Rights (UDHR)**, 1948 provides that “*No one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.*”

*Article 5* of UDHR provided the right to protection against torture, and the same has been sought to be achieved through the Declaration of the *Fifth United Nations Congress* held in 1975.

**Article 7** of the ICCPR Covenant proclaims that “*no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experiment.*”

India has signed but not ratified the *UN Convention against Torture (CAT)*. The *National Human Rights Commission (NHRC)* continuously tries to put effort to pursue the government to ratify the Convention against Torture so that a new domestic law can be made to stop this custodial torture. But the efforts of the NHRC till date didn't get any success. The Supreme Court, through its various judgement has condemned torture, which has contributed to form a national jurisprudence by acting as a precedent.

- **NATIONAL ASPECT**

## CONSTITUTIONAL SAFEGUARD

Indian Court, in a number of its judgement held that only because a person is in custody or is detained or is under arrest, does not deprive him of his basic fundamental rights, i.e., Article 20, 21, and 22 provided in the constitution and in any situation if it's get violated then it empowers the person aggrieved to move to the Supreme Court under Article 32 of the Constitution of India to get back his rights.

### **Article 20 of the Constitution of India:**

It provides protection to the person in respect of conviction for offences by laying certain safeguards for the accused. It includes non-retroactivity of the laws, protection of accused against double jeopardy, and protecting the accused from self-incrimination as police subject a person to torture and violence to get a confession for a crime even if he has not committed that offence.

A Reservoir of Socio-legal Discourse

### **Article 21 of the Constitution of India:**

Article 21 has a much wider scope than any other provision. This Article talks about the right to life with personal dignity and can be used to understand the Indian judicial system to protect the right to be free from torture. This Article guarantees 'protection of life and personal liberty', which also includes a guarantee against torture even by the State to an individual who is in custody. The right to life is not just limited to merely live a life like an animal; it has so much wider scope.



## Article 22 of the Constitution of India:

This Article provides protection against arrest and detention. It lays down basic rights related to arrest and detention, which are: -

- To be informed of the ground of arrest.
- Consult and to be defended by the lawyer.
- Production of the arrestee before the Magistrate within 24 hours of arrest.

## OTHER LEGISLATIVE SAFEGUARD

### Indian Penal Code (IPC), 1860:

IPC has been designed to cover all substantive aspects of criminal law. It includes various sections which deter the power of the police official, who is authorized to arrest and interrogate a person during the investigation of a crime by using third-degree methods causing 'torture,' i.e., section 330, 331, 342 and 348. Police officials can be held liable for the offences affecting the human body, i.e., Sec. 302, 304, 304A, 306, etc.

In the landmark judgement of the **Mathura Rape case**<sup>6</sup>, Sec. 376<sup>7</sup> is amended, and Sec. 376 (1) (b) is introduced, which penalizes custodial rape. It criticizes the acts of a police official who misuses their power and takes advantage of their authority.

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<sup>6</sup> Tuka Ram and Anr. v. State Of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810

<sup>7</sup> Indian Penal Code 1860, no. 45, Act of Parliament 1860

### **Code of Criminal Procedure, 1973:**

Sec. 54 of CrPC provides the right to an arrested person to have him medically examined and get a report of all the injuries inflicted by the police in custody. Accordingly, Magistrate is required to examine the body of a person if he made an allegation of custodial torture; it gives him a right to bring it in Courts notice and get medically examined. The High Court can interfere under section 482 of CrPC if the Magistrate didn't hear the complaint regarding custodial torture.

Sec. 176 of CrPC provides the provision in relation to death because of custodial torture, in this compulsory inquiry has to be made by the Magistrate.

### **Indian Evidence Act, 1872:**

The evidence collected by illegal ways, including torture, is not acceptable in courts as provided under section: -

Sec.24- *“Confession by inducement, threat or promise when irrelevant in criminal proceeding.”*

Sec.25- *“Confession to police officer not to be proved.”*

Sec.26- *“Confession by accused while in custody of police not to be proved against him.”*

### **Indian Police Act, 1861:**

Sec. 7 of the Indian Police Act provides that *“the appointment, dismissal, suspend or reduce the rank of any police officer whom the government shall think remiss or negligent in the discharge of his duty or unable to perform the same.”*

Sec. 29 of the Indian Police Act provides that *“Every police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule and regulation shall be held liable, to a penalty or imprisonment.”*

## LANDMARK JUDGEMENT IN CASES OF CUSTODIAL DEATH

- Yashwant And Others v. State of Maharashtra<sup>8</sup>

The Supreme Court upheld the conviction of nine police officers of Maharashtra related to the 1993 custodial death case. The Supreme Court enhanced their imprisonment from three to seven years. The Police officers were found guilty under section 330 of the IPC that involves “*voluntarily causing hurt to get confession.*”

The SC bench comprising Justices N.V. Ramana and M.M. Shantanagoudar said that “*The manner in which the deceased and his family members were taken into custody reflects pure act of lawlessness and does not befit the conduct of the police,*”

- J. Prabhavathiamma v. The State of Kerala & Others<sup>9</sup>

After hearing the case for more than ten years, the CBI court awarded the death sentence to two police official over the Custodial death of a person who works as a scrap metal shop worker. Justice J Nazar while sentencing the police official, had said: “*This is a brutal and dastardly murder by accused (number) one and two... The acts of the accused persons would definitely adversely affect the very institution of the police department... If the faith of the people in the institution is lost, that will affect the public order and law and order, and it is a dangerous situation.*”

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<sup>8</sup> Yashwant And Others v. State of Maharashtra, (2018) 4MLJ (CrI)10(SC)

<sup>9</sup> J. Prabhavathiamma v. The State of Kerala & Others, WP(C). NO. 24258 OF 2007 (K) AND CRL. R.P.2902 OF 2007

- D.K Basu v. State of West Bengal<sup>10</sup>

This case came up through a petition under Article 32 of the Constitution of India before the Supreme Court by an NGO; this NGO draws the attention of the Chief Justice of India on a news item published in a newspaper regarding custodial death in police or judicial custody by the police official in the State of West Bengal. The Court observed that the custodial torture is the clear and direct violation of Human Right and by this case, the court laid down 11 guideline which has to be followed while, during and after the arrest of a person by the police official.

Supreme Court in *D.K Basu case* warned that: *“Failure to comply with the requirements mentioned shall apart from rendering the concerned official liable for departmental action liable to be punished for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.”*

- Nilabati Behera v. State of Orissa<sup>11</sup>

It was held by the Apex Court that *“prisoners and detainees are not denuded of their fundamental rights under Article 21 and that it is only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detainees. It was further observed” ... there is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.*” The Honorable Court awarded the mother of the deceased a compensatory number of Rupees 1.5 lacs who died in police custody. Article 9 (5) of the International Covenant on Civil and Political Rights was also taken as a reference by the court in the said case; according to

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<sup>10</sup> D.K Basu v. State of West Bengal, (1997) 1 SCC 416

<sup>11</sup> Nilabati Behera v. State of Orissa, (1993) 2 SCC 373

this, “*anyone who has been the victim of detention or unlawful arrest shall have an enforceable right to compensation.*”

- *Ragbir Singh v. State of Haryana*<sup>12</sup>

Where the police official, to extract information or confession, uses torture and that causes the death of a person suspected of theft, the court observed that “the lives and liberty of people are in danger when the guardians of law stab human rights to death.” The court awarded a life sentence to the police official who is responsible for the death of the suspect in police custody.

## POSITION OF NATIONAL HUMAN RIGHTS COMMISSION

NHRC believes in “*Sarve Bhavantu Sukhinah.*”, that thrives to achieve happiness and health by sustaining and protecting everyone’s right and respect in society. Things went right when the President’s assent was received by the Protection of Human Rights Act. Individual commissions at the National and State level were set up as per Section 3 and Section 21 of the Act<sup>13</sup>, respectively.

In a country like India, it so unethical and illegal that protectors of law, i.e., police personnel themselves, are found involved in custodial crimes like murder, rape, molestation, etc. This questions not only the safety of the accused in custody but also human dignity. Thus, the Commission not only grants compensation for such victims but also aims to provide a healthy and reasonable environment inside walls of prisons, around the police personnel.

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<sup>12</sup> *Ragbir Singh v. State of Haryana*, 1980 (3) SCC 70)

<sup>13</sup> Protection of Human Rights Act, 1993

## GUIDELINES TO CURB CUSTODIAL VIOLENCE

In order to control custodial deaths, guidelines have been issued by the Commission for States and UTs, that each and every death in custody (police or judicial) – natural or unnatural need to be reported within twenty-four hours.

Although the cause of custodial death might not be any cruelty, medical negligence, or offence, it's necessary that no presumptions be made before proper inquiry and analysis of reports (post mortem, health screening report, magisterial inquiry, etc.) Further guidelines issued by Commission in December 2001 stated that states must submit prescribed reports in 2 months from the date of death.

Model Autopsy Form is filled after establishing facts from the view of experts of required fields and listening to State while referring to U.N. Model Autopsy protocol.

In cases of custodial deaths, video-filming of the post mortem examination has been recommended to all the States and submit such cassettes to the Commission. The main purpose of taking this step was to make a record of detailed discoveries in the report, specifically about injury marks due to violence in given cases, to not leave any scope of manipulation or alteration of material information so that an independent and unbiased review of post mortem report can be presented further.

All of these instructions are imposed firmly on authorities, and in case of any non-compliance, they are to be held liable.

The Commission believes that in order to control and reduce the count of custodial crimes, strict actions must be taken (till prosecution) against the wrongdoers of all sorts of violence done in custody. In several cases, monetary relief has been granted to victims or their heirs, but sometimes punishment ordered

against perpetrators is found disproportional to the crime so committed. Furthermore, it is also observed that few custodial deaths being reported after a substantial delay or not even reported.

## **A HAND IN POLICY FORMULATION AGAINST CUSTODIAL VIOLENCE**

To fulfil our nation's compliance with the United Nations Convention Against Torture (UNCAT), a petition was filed in Apex Court in 2016, where the 273<sup>rd</sup> report was submitted by the Law Commission of India during hearings. The government was recommended to approve UNCAT, and further Prevention of Torture Bill, 2017 was presented. For curbing custodial deaths, the Ministry of Home Affairs suggested amendments in Sections 330 and 331 of the IPC, 1860.

After consistent recommendations by the NHRC, the Law Commission of India and the Supreme Court drafted a new Bill – "Prevention of Torture Bill, 2017". Although there were few flaws in it still a ray of hope has been emerged in a democracy that its implementation will substantially suppress cases of custodial violence and ensure justice for families of custodial death victims.

## **SHOULD POLICE OFFICIAL BE HELD LIABLE FOR ANY NATURAL DEATH IN CUSTODY?**

Yes, they should be held liable in case of natural death, too, but only in cases where the death can be prevented but due to the negligence on the part of authorities, it is not taken care of.

In the cases of natural deaths, most deaths were caused due to tuberculosis or heart attack being commonest. It is clear that prisoners form a high-risk group for contracting infectious diseases. This is associated with overcrowding in jail,

closed and poor living conditions, improper ventilation, and poor nutrition provided. In case of unnatural death, suicide is most common.

Natural deaths or unnatural deaths, in all the cases, there is some kind of negligence and disregarding human life by the authorities. Records related to their medical illnesses, ongoing treatment, history of any drug addiction, etc., were not available with authority. Many prisoners have contracted the illness during their imprisonment, while many cases already had that illness.

When anyone's freedom is taken away by the state, then it assumes full responsibility for preventing any violation of their human rights. The right to life is the most fundamental right among others. In case of natural death, the Magistrate has the right to conduct an inquiry under Section 176 of CrPC, and no compensation is provided by states under such cases. Every year many people die in custody; the majority of these deaths are due to natural causes. Aggravating factors like improper medical facilities, irregular healthcare facilities, inadequate treatment for HIV, communicable diseases, drug addiction, and many other factors cause death, which comes under the category of natural death, but these deaths are caused due to negligence and irresponsibility of the authority. So in these cases, as well authority should be held liable under negligence.

Though it is not possible to avoid each and every case of death in custody, it is possible to reduce such death by taking precautionary measures.

### **CONCLUSION & SUGGESTIONS**

As depicted by numbers, the issue of custodial deaths and violence is prevailing in our society for many decades. Every time such a mishap occurs, we see an uproar by people and media, which eventually either fades away with time or falls



back behind inquiry committees. If anyone's liberty is restricted by the state, then it must realize complete responsibility to take care of their basic human rights, and it is not so difficult to understand that just by controlling custodial violence, cases of custodial deaths will automatically reduce to a great extent. Rather than finding a new solution, we need to focus on the rightful and honest implementation of already existing laws and guidelines and notice the change thereafter. Moreover following suggestions might be considered:-

- The Parliament of India should ratify conventions like Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, International Convention for the Prosecution of All Persons from Enforced Disappearance, and make domestic laws in their compliance.
- Some sections need to be amended, Section 197 of the CrPC, 1973, so that no prior permission by the government is required before making charges against policemen in case of custodial violence or similar crimes. And Section 36 under the Protection of Human Rights (Amendment) Act, 2006 permits NHRC to inquire about human rights violation cases reported. And aged-out pre-independence 'Police act of 1861' as well which has loopholes in holding police accountable for several wrongs.
- It is more important to strictly implement existing laws and guidelines rather than making new laws regarding how police officials should treat the accused and victims. It must be ensured that any police officer involved in custodial torture be retrained and prosecuted accordingly.

- Recommendations given in the *D. K. Basu*<sup>14</sup> case need to be implemented right from the moment of the arrest of any suspect; he/she be informed about their basic rights to consult a lawyer, availing medical check-up, and notifying known persons.
- Each corner of every police station under CCTV camera vigilance will automatically create fear of being caught and reduce the chances of violence of any sort in custody.
- India lacks behind in scientific methods of investigation due to which police officers tend to use other methods that sometimes are morally and legally wrong to bring out the truth. Modern and non-coercive techniques must be taught and trained for interviewing and questioning suspects and witnesses. Overall, police training methods need revision.
- Also, it has been observed that the victim's family has been many a time oppressed or threatened to withdraw complaints against policemen or powerful people. There is a dire need to provide them with an assurance that they will be protected at any cost until the perpetrator gets punished by law.
- Coordination of NHRC with the National Legal Service Authority will help victims of all classes to seek justice against any sort of custodial violence or crimes. Assisting the victim and their family will not help them legally but psychologically and morally as well.
- NHRC must ensure that complainants need not file multiple complaints at different authorities; all of them should be compiled. And the practice of

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<sup>14</sup> D.K Basu v. State of West Bengal, (1997) 1 SCC 416

shutting down the investigation after the passing of interim compensation should be stopped.



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