

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**  
**[ISSN 2581-5369]**

---

**Volume 3 | Issue 4**

---

**2020**

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [editor.ijlmh@gmail.com](mailto:editor.ijlmh@gmail.com).

---

# Custodial Death of Jayaraj and Fenix and the Exposure of Police Brutality in India

---

NAMRATA KANDANKOVI<sup>1</sup>

## ABSTRACT

*This research paper throws light on the recent events of police atrocities in the Thoothukudi case. It further goes on to address the issue of custodial deaths in India and the reason behind the increase in number of custodial deaths with the passage of time. The paper further drags the attention of the readers towards the lacunae which exists in the working of the current system and how this lacunae acts as a driving force in increasing the custodial deaths. Further, the paper makes a comparison of the Indian scenario with that of the world by studying the recent case of George Floyd and the black lives Matter movement in America. It also analyses the significance of peoples' movement and the impact it has on the society.*

*It further analyses the importance of peoples' movement in India and the powerful impact it can cause in the current system. Lastly, the paper attempts to find solutions to the ongoing problem with reference to custodial deaths in India and the attempts to relish the importance of peoples' participation in the Indian context.*

## I. RECOUNTING THE POLICE BRUTALITY: GIST OF THE INCIDENT

On 19th June 2020, Fenix, a mobile accessories shop owner was informed about his dad, Jayaraj being picked up by the police. To this, Fenix was worried and shocked. He rushed to Sathakulam police station for what the police termed as an "inquiry"<sup>2</sup>. Three days later, the family of Fenix and Jayaraj were informed by the police that the duo had died in Kovilpatti government hospital. The hospital was around 100 kilometers from their place of residence. This evoked widespread outrage in Tamil Nadu. People took to streets demanding justice for the family of the departed. Strict action was demanded against the policemen involved in the incident. Further, this case came up to be one of the worst instances of police brutality inflicted on the public. Dragging the attention of the public, the case came to be among the worst

---

<sup>1</sup> Author is a student at Symbiosis Law School, Pune, India.

<sup>2</sup> Sarthak Karol, Janay Jain, Jayaraj and Fenix: Privilege and the lack of accountability narrow the scope of victims, FIRST POST, (July 6<sup>th</sup> 2020 18:50 IST) <https://www.firstpost.com/india/jayaraj-fenix-police-custodial-deaths-policing-powers-are-sovereign-powers-privilege-and-lack-of-accountability-narrows-scope-for-victims-8564281.html>.

atrocities inflicted by the police during the times of COVID lockdown.

#### **FATHER-SON SEXUALLY TORTURED IN THE POLICE CUSTODY**

Jayaraj was arrested by the police for violation of the then existing lockdown norms. Tamil Nadu continued to observe lockdown in order to curb the spread of COVID-19. Jayaraj was accused of keeping his shop open beyond the permitted limits. Fenix is said to be assaulted by the police when he questioned the brutality imposed on his dad. Statements of various eye-witnesses came to light followed by the outrage on social media. Ravi, a friend of Fenix stated the following- "Fenix was held by this collar and pushed to the wall. Five policemen including the inspector bet him black and blue in front of us".

On the same day, around 11 pm Ramesh and Ravi, two of Fenix's friends tried to sneak into the police station. But both of them were stopped by the volunteers (friends of the policemen) outside the station. The friends were informed that the investigation was underway. When they somehow managed to see Fenix, they saw him lying naked. He was covered in blood. Ravi stated. On 22nd June 2020 from around 7 am to 12 pm Fenix and Jayaraj had to change at least seven lungis as they were bleeding copiously. They complained of severe pain in the genitalia and the rectum. Following this, there was pressure put on the police to obtain the medical certificates of the duo. In response to this, the police took them to the judicial magistrate's house. According to the statement issued by one of Fenix's friend, the police had threatened Fenix to not reveal anything to the Magistrate. The police even threatened him of ruining his life if he opens up in front of the magistrate.

#### **WAS THE CCTV FOOTAGE CONTRADICTING THE FIR?**

After accessing the CCTV footage it was revealed that there existed glaring discrepancies in the FIR lodged by the Tuticorin police. The CCTV footage was evident enough in stating that there wasn't any kind of abuse or argument inflicted on the police officers by either Jayaraj or Fenix. The father-son duo did not indulge in any of these activities<sup>3</sup>. Nor did they roll on the ground as stated by the police in the FIR. The CCTV footage stands contrary to the statement issued in the FIR in many ways. Firstly, the footage makes it quite clear there wasn't any crowd outside the Jayaraj's shop. Secondly, there exists no proof about the father-son threatening or assaulting the police officers in the CCTV footage. Lastly, the police indicated in the FIR that the injuries on Jayaraj and Fenix were self-sustained which were resulted because of the duo

---

<sup>3</sup> Megha Kaveri, Justice for Jayaraj and Fenix: Justice for the custodial deaths, THE NEWS MINUTE (June 26<sup>th</sup> 2020, 18:40 IST) <https://www.thenewsminute.com/article/justice-jayaraj-fenix-bennix-timeline-two-shocking-custodial-deaths-tn-127424>.

rolling on the floor. But there is no evidence of them rolling on the floor in the CCTV footage. Disregarding everything stated in the FIR, the CCTV footage actually shows the father-son co-operating with the police<sup>4</sup>. It shows them quietly walking towards the police van. There wasn't even a pinch of aggressive behaviour on their part as seen in the footage. After such glaring discrepancies in the FIR came to light, it shook the nation to its core. Hence, the public demanded immediate action against the police officers involved in the death of Jayaraj and Fenix.

### **IS SUSPENDING THE OFFICERS THE ULTIMATE SOLUTION?**

As a backdrop of the death of the duo and the outrage throughout the country, there was a suspension notice issued against the cops involved in the custodial death of Jayaraj and Fenix. But was it all? Is suspending the officers an ultimate solution to the death of the duo? This question was answered with the increased outrage amongst the people and the pressure mounting on the authorities to take appropriate action. The news of police officers connected to the death of the duo being suspended broke the internet. Followed by this, there were nationwide protests held demanding appropriate actions against the police.

The case was then transferred to the CBI. Followed by this, the main accused in the case Raghu Ganesh, the Thoothukudi sub-inspector was accused of murder and taken into custody. This development came to light after the CBI took over the case. Till date, there have been five police officers arrested in relation to the death of Jayaraj and Fenix. These officers have been booked under Section 302 of IPC. Moreover, the Central agency also amended the FIRs filed against the police officers. This was to include the charges of murder under Section 302 of IPC.

## **II. HOW MANY MORE SCREAMS TO GO UNHEARD: HISTORY OF POLICE BRUTALITY IN INDIA**

This segment of the paper will discuss the numerous custodial deaths that are reported in India. According to the statistics released by the National Crime Record Bureau at least five custodial deaths are reported in India every day. Some of the infamous custodial deaths have been discussed under:

### **1) Babu Shiekh Nisar's custodial death: Vadodara police booked**

In this case, the victim Babu Shiekh Nisar, a 62-year-old man was reported missing on the 10th of December 2019. This came after he was apprehended by the Vadodara police for the

---

<sup>4</sup> OpIndia Staff, Jayaraj and Fenix case: Three discrepancies between the FIR and CCTV footage, OP INDIA (June 29 2020, 04:12 IST) <https://www.opindia.com/2020/06/justice-for-jayaraj-and-fenix-bennix-tuticorin-police-fir-discrepancies-cctv/>.

allegation of theft against him. The theft was suspected to be committed in the Pooliwadi area of the city. An investigation was launched in order to trace the missing person. The police conducted the search in Rajasthan, Maharashtra, Gujarat and Telangana. But to no avail, the police could not find the missing person.

Following such developments, an FIR was filed against the police officers on the night of 6th July 2020. The FIR was filed followed by a probe ordered by the Assistant Commissioner of Police.

The FIR stated that the victim was arrested by the police in suspicion of his involvement in a theft case. It has been alleged that the police tortured him in the computer room of the police station. It was also revealed that the evidence in the case was tampered by the police officials. In fact, the reason behind his death was the torture mounted by the police personnel on him. After the death of the victim, the accused police officers disposed off the body in an undisclosed location<sup>5</sup>.

On 9th July 2020 which was nearly 7 months after the incident, 6 police officers were booked for the custodial death of the 62-year old victim. His death was stated to be a consequence of the torture inflicted on him by the police.

## **2) Unnao rape case: Father of the victim dies in police custody**

On 4th June 2017, an 18-year-old woman made rape allegation against the then BJP MLA Kuldeep Senger. This event saw an unfortunate turn of events and shook the nation to its core. The victim belonged to a poor minority community. This incident unfolded the misuse of power by the influential people in India. The family of the victim went through a series of untoward incidences. One such instance was where her father died in police custody.

The rape victim reached the Unnao police station to lodge a complaint against the then BJP MP. To her dismay, the police seemed reluctant to name the MP in the FIR. And instead, they arrested the victim's father under IPC Section 504 (intentional insult to provoke breach of peace) 506 (Criminal Intimidation) and Section 323 (voluntary cause of hurt). It is further alleged that the victim's father was reported sick when in police custody. 5 days after his arrest the victim's father was reported dead. The postmortem reports of the victim's father suggested swelling on his arms. It even showed that there were stitches on one of his eyebrows<sup>6</sup>. The

---

<sup>5</sup> Arsheen Kaur, Custodial deaths in India are cold-blooded use of power and privilege, THE WIRE (July 14<sup>th</sup> 2020, 14:25 IST) <https://thewire.in/rights/custodial-deaths-in-india-are-a-cold-blooded-play-of-power-and-class>.

<sup>6</sup> Sanjay Pandey, Unnao rape case: Negligence led to death of victim's father, DECCAN HERALD (August 8 2019, 17:18 IST) <https://www.deccanherald.com/national/unnao-rape-negligence-led-to-victims-fathers-death-752999.html>.

Unnao District Administrator was questioned about the custodial death of the victim's father. In reply to this, the Administrator stated the following. "As the father of the victim comes from a socially and economically backward class of the society, there would be ways met out to deal with him". Such instances rather question the accountability of the police and the power exercised by them.

### **Kerala's infamous custodial death and capital punishment to the cops**

In one of the rare instances in the country, two police officers were awarded death sentence by the CBI court for the custodial death of a worker in scrap metal shop. The victim K Udaykumar and his friend Suresh Kumar had cases of theft registered against them. One day when the duo was arrested in a park in Thiruvananthapuram. There was a sum 4000 found in possession of Udaykumar. After finding this, the constables took him to the fort police station. The victim was further tortured in the custody in the lieu of getting a confession statement from him<sup>7</sup>.

Days after his arrest, Udaykumar was reported dead in the police custody. The post-mortem report suggested that there were 22 injuries on the victim. The report also suggested rupture on his thigh vessels and copious bleeding. The main reason for his death was reportedly hemorrhage (excessive bleeding). This case was further transferred to the CBI after pleas by the mother of the victim. The CBI filed a charge-sheet which booked the three constables for murder. While there were allegations of conspiracy and destruction of evidence made against other two cops.

While deciding the punishment of the cops there were some interesting points raised. It was alleged that this was one of the rarest of rare cases of custodial death. It was stated that the acts of the accused police officers would affect people's faith in the institution of police. Further, such instances showcase a clear lack of accountability on the part of the police officers. Initially, there was a punishment of life-imprisonment imposed against the police officers. Eventually, it was pleaded that life-imprisonment would not be an adequate punishment for the heinous crime committed by them. And hence, this case stood as a landmark one where death punishment was awarded to the cops for the custodial death reported under their supervision. In this case, awarding of death punishment to the cops again became a point of debate from the human rights point of view.

---

<sup>7</sup> Akshaya Nath, Bloodied clothes, torture, discrepancies in FIR: Custodial death of father-son duo, INDIA TODAY (27<sup>TH</sup> June 2020, 11:04 IST) <https://www.indiatoday.in/india/story/tamil-nadu-custodial-deaths-justice-for-jayaraj-fenix-tuticorin-protest-all-you-need-to-know-1693158-2020-06-26>.

### III. LEGAL PERSPECTIVE ON CUSTODIAL DEATHS: WHAT DOES THE LAW HAVE TO SAY?

There have been numerous laws in force which call for strict action against violations of rights of a prisoner or be it human rights violations. These laws have been in place to curb the brutality imposed upon the persons in police custody. At the same time, the growing cases of custodial deaths in India, despite these laws being in force calls for the attention of the general public. Hence, the next segment of the paper analyses the loophole which exists in the law and the society which is resulting in the growing number of custodial deaths.

#### 1) The Code of Criminal Procedure and protection offered by it

There have been various laws under Criminal Procedure Code<sup>8</sup>, which provide for the protection and safeguard of the persons in police custody. The same will be looked into in the following section of the paper:

**a) Section 49** - This section states that a person arrested by the police and who remains in the custody cannot in any circumstances be subjected to more restraint or harm than it is required to prevent the person from escaping.

The circumstances which followed in Jayaraj and Fenix's case are evident in emphasizing the fact that the police did not use reasonable force on the duo. In fact, the post-mortem report suggests that the death of the duo was a result of hemorrhage. This makes the fact clear that the police rather used excess force on the father and son.

**b) Section 57**- This Section puts emphasis on the fact that whenever a person is arrested by a police officer without a warrant, he cannot be retained in the police custody for longer than 24 hours. Such a provision can be made available only with the special order from the magistrate<sup>9</sup>.

But in the case of Jayaraj and Fenix, The duo was arrested by the police and only after three days of their arrest the police reported that the duo has passed away in the Kovilpatti hospital. This action of the police goes against the law mentioned under Section 57 of CrPC.

**c) Section 163** - It has been stated in this Section that police cannot impose any restrictions on the persons wanting to dispose any statement with his free will during the time of

---

<sup>8</sup> The Criminal Procedure Code, 1973, Act No. 2, (India).

<sup>9</sup> Abiyaa R, Custodial Violence: Indian Perspective, LEGAL SERVICES INDIA, (July 3<sup>rd</sup> 2020, 22:01 IST), <http://www.legalserviceindia.com/legal/article-55-custodial-violence-indian-perspective.html#:~:text=The%20Supreme%20Court%20of%20India%20ruled%20that%20the%20burden%20of,the%20infringement%20of%20fundamental%20rights.>

investigation.

Contrary to what has been stated in the law above, the eye-witnesses in Jayaraj and Fenix's case stated that Fenix was threatened by the police to not to reveal anything in front of the magistrate. The acts of the police again call for a review as they violate the above-mentioned law.

## **2) The Indian Penal Code (IPC) and protection offered by it**

The sections stated in the Indian Penal Code (IPC)<sup>10</sup> provide for the punishment of the public officials. These punishments become applicable when the officers act beyond their official capacity. This provides protection to the one in custody by reminding the public officers their powers and restrictions.

a) **Section 166 of IPC-** Any public servant who purposefully disobeys the law. Or willfully causes damage to any person with an intention to do so will be liable for punishment. The punishment may range from imprisonment up-to a year, fine or both.

b) **Section 340 to 348 -** The cluster of Sections here deal with the wrongful acts committed by the public servants in office. It also provides for punishment for the commission of such offences. These offences include wrongful confinement or wrongful restraint and the aggravations followed by it.

A keen look into the acts of the Thoothukudi police suffices the fact that these laws were indeed violated by them. This calls for a stringent action against those violating the laws in force.

## **NEED TO IMPLEMENT ANTI-TORTURE LAWS IN INDIA?**

The current status of the Thoothukudi case reveals that the officers responsible for the death are being prosecuted. Also, a certain amount of compensation will be sanctioned to the family of the victims. This aspect forces us to ponder whether this is the ultimate solution to the problem being dealt with here. The answer to this question would not rather be affirmative<sup>11</sup>. There exists a dire need to look at the problem on a larger scale in order to resolve the same. To achieve this, a country would require a stringent legal framework which would be aligned with international law. UN Convention Against Torture (UNCAT) is one such law. It would be interesting to note that India has been a signatory to UNCAT since 1997. In addition to being a signatory, India would also require watertight enforcement of such laws to deter the cruel practices of the police.

---

<sup>10</sup> The Indian Penal Code 1860, Act No. 45.

<sup>11</sup>Ajit Prakash Shah, India's culture needs to end, THE HINDU (July 3<sup>rd</sup> 2020, 01:00 IST), <https://www.thehindu.com/opinion/lead/indias-torture-culture-needs-to-end-now/article31973431.ece>.



India is yet to ratify the UNCAT. Although various attempts have been made to ratify the law, it has failed several times. From the year 2010, there were serious attempts made by senior advocates like that of Ashwani Kumar and the bill was even passed by the Lok Sabha and Rajya Sabha. Despite this, the bill never became a law as the then UPA government allowed the bill to lapse<sup>12</sup>. These developments were again seen in the year 2016. Again in 2017, there were attempts made by the law commission in making it a law, but the bill happened to meet the same unfortunate fate yet again<sup>13</sup>.

These unfortunate turn of events rather forced the Supreme Court to take a backseat as against its landmark judgments rolled out highlighting the torture culture prevalent in India. The apex court has delivered judgments ranging from *Raghubir Singh v. State of Haryana*<sup>14</sup>, *Francis Coralie Mullin v. Union Territory of Delhi*<sup>15</sup> to *Sheela Barse v. State of Maharashtra*<sup>16</sup>. These renowned judgments revisited the torture culture in India and the cruelty imposed by the police.

#### PEOPLE'S MOVEMENTS AND THEIR IMPACTS ON SOCIETY

The failure in implementing the UNCAT should not be seen as the final resort which will never be addressed. If we look around, there have been several recent developments like that of *#blacklivesmatter* movement. This movement gained momentum throughout America. The movement made way for debates which touched upon various aspects including disarming and defunding the police. Over the passage of time, the movement rather became popular throughout the world and it even saw the participation of Indians. Likewise, India needs people's movements which can put pressure on the authorities to bring about the necessary changes in the legislature to end the torture inflicted on prisoners. The movement *#endtorturetoday* had gained momentum during Jayaraj and Fenix's case. But the same did not garner much attention over the period of time.

In order to bring about the required changes, the word 'people' should also include under its ambit, some of the important stakeholders of the society like- the Civil Society, Student groups, Media and even the Bar. All of them tend to have an important role to play in catering to the change which will be required for the smooth functioning of the society.

---

<sup>12</sup> Mukund P Unni, Custodial Deaths: Revisiting debate on Anti-torture Law, LIVE LAW (July 28<sup>th</sup> 2020, 03: 10 IST), <https://www.livelaw.in/columns/custodial-deaths-revisiting-debate-on-anti-torture-law-159054>.

<sup>13</sup> Live Law research team, Custodial death: What is the procedure for enquiry?, LIVE LAW (June 27<sup>th</sup> 2020 18:45 IST) <https://www.livelaw.in/know-the-law/custodial-deaths-what-is-the-procedure-for-inquiry-159030>.

<sup>14</sup> *Raghubir Singh v. State of Haryana*, 1985 SCR (1) 724.

<sup>15</sup> *Francis Coralie Mullin v. Union Territory of Delhi*, 1981 AIR 746.

<sup>16</sup> *Sheela Barse v. State of Maharashtra*, JT 1988 (3) 15.

#### **IV. ADDRESSING THE BRUTALITY AT HAND: WHY DO CUSTODIAL DEATHS OFTEN GO UNPUNISHED IN INDIA?**

The main question to address here as of now is whether the outrage for Jayaraj and Fenix's case was enough to bring about accountability. The answer to this question is unfortunately in a negative sense. Looking at the past records, bringing accountability by way of outrage garnered in Thoothukudi case rather seems unlikely. There are several roadblocks which one will encounter while trying to bring about the required accountability in the legal system. These roadblocks tend to exist from the step of filing a First Information Report (FIR) against the police to the point of their prosecution. Considering the Thoothukudi case, after the murderous attempt was inflicted on the duo by the police, there were suspension orders issued against two inspectors. Further, there were also departmental proceedings initiated against them<sup>17</sup>. These are actually the usual responses to such cases. But, what comes after this is more complicated.

##### **i. Roadblock 1: Loopholes in enquiry by Judicial Magistrate**

Section 176 (1A) of CrPC states that custodial violence ought to be investigated by Judicial magistrate. In the Thoothukudi case, an inquiry was initiated by the magistrate into the case. Followed by this, the Magistrate in his letter to the Madras High Court alleged that the police made attempts to intimidate them. He even alleged that the police tried to destroy the evidence. These instances are the examples of the ill-effects of the impunity enjoyed by the police. Then the Madras High Court had to intervene in the matter. As of now, the case stands transferred to the CBI. These developments tend to take up a lot of time, which make common man lose his faith in the legal system.

##### **ii. Roadblock 2: Lack of direct evidence in cases of custodial deaths**

The absence of direct evidence in custodial deaths acts as a major hurdle while investigating the case. The apex court while delivering the judgment on *State of MP v. Shyamsundar Trivedi* stated that the police ties by the bonds of brotherhood rather tend to remain reluctant in assisting the court. To ease this hurdle, the Law Commission of India has attempted twice in its 113th and 152nd report to insert Section 114B in the Indian Evidence Act, 1972. This section states that if injury is caused to a person while in custody, the court can presume that the police officer-in-charge was the one who inflicted such an injury. Unfortunately, this recommendation hasn't been taken up by the parliament.

---

<sup>17</sup> Raju Bagga, Why custodial deaths often go unpunished, HINDUSTAN TIMES (July 5<sup>th</sup> 2020, 22:18 IST), <https://www.hindustantimes.com/analysis/why-custodial-deaths-often-go-unpunished/story-f35QfTkbmuvmxDRn759vII.html>.

### **iii. Roadblock 3: These cases take up long time resulting in the witnesses turning hostile**

The cases of custodial deaths rather take up a long period of time. This increase in the time gives an opportunity to the accused to turn the witnesses to their advantage. To support this, we can take a look at a recent case of custodial death in Uttar Pradesh. Seven policemen were acquitted of all charges in the case of custodial death of a man. The victim's minor son who had witnessed the violence narrated the happenings. He had stated that the police used electric shocks and also stabbed them with screwdrivers. But eventually, the family of the victim turned hostile<sup>18</sup>. This went to an extent that the family contradicted its own statement given in the FIR. In order to resolve the same, there have been various attempts made by the Law Commission of India<sup>19</sup>. A number of recommendations have been made by the Law Commission for bringing into force the victim protection legislation. But following the same fashion as that mentioned previously, the implementation of the legislation still stands overdue. Hence, the effectiveness of the implementation also stands uncertain.

## **V. CONCLUSION**

The paper has analysed the issue of custodial deaths in full length. The important aspect which arises out of this analysis is the lack of robust legislation in force. Such legislation would help in fighting the torture inflicted on people by the police. There have been certain significant roadblocks which play a major role in hampering the appropriate working of the legislature. The important task at hand is to resolve these roadblocks which in turn will help in bringing accountability in the cases of custodial deaths. These roadblocks are to be addressed in an appropriate way. Taking up such measures will help in bringing accountability in instances of custodial deaths.

In addition to the suggestion stated above, there exists a dire need for all the agencies to function in co-ordination with the others. The bar, media, civil society, medical practitioners, magistrate, student groups and active participation of people in raising their voice against the atrocities will collectively help in resolving the issue at hand. The term 'people' should include all these aspects. When all of them collectively strive hard for a better society and succeed in putting pressure on the authorities, we can achieve an end on the police atrocities against the

---

<sup>18</sup> Reuters, Custodial killings go unpunished in India, INDIA TODAY (December 19<sup>th</sup> 2016, 19:02 IST) <https://www.indiatoday.in/india/story/custodial-deaths-police-torture-human-rights-watch-report-india-358437-2016-12-19>.

<sup>19</sup> Nausheen Khan, Custodial deaths: the Dark side of Indian Police, THE WIRE (July 26<sup>th</sup> 2020, 13:17 IST) <https://www.livelaw.in/lawschool/articles/custodial-torture-and-deaths-the-dark-side-of-indian-police-160035>

society. This will, in turn, bring back people's faith in the police and the legal system of the country.

\*\*\*\*\*