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# Custodial Deaths: No More Saviors in the Nation

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## ABSTRACT

*“Torture is brutality to civil society”. An overview of the prevailing condition of one of the most devastated crimes i.e., custodial deaths is basically the purpose of the study which creates the controversy of trust on the police and their authority of powers on the people or the citizens who are in their custody. Custodial Death is the happening of an event of the death of an individual who has been detained by the police on being convicted or someone who is undergoing a trial. Custodial deaths are known to be the cold-blooded play of power and class which is to be discussed in detail. They are influenced by power politics, caste and religion-based discrimination.*

*It has become common to hear about the deaths of people in custody due to physical torture by police. Most of the times the act of physical torture by police has arisen a question on the extent of their authority and powers. It has become a humanitarian issue which shows that the existing laws for prosecution are not being into effect with transparency. As the design of the paper also focusses on the aim that law alone will not eliminate the crime which is leading to death. The act of such brutality has made the meaning of word ‘custody’ very ironic as it means ‘protective care or guardianship of a person who is in the custody’. Hence, the remedial measures should be the significant factor in the light of prevention of such crimes and deaths as this is one of the highlighted factors in the National Human Rights Commission’s list.*

**Keywords:** *Humanity, Authoritative issues, Brutality, Guardianship.*

## I. INTRODUCTION

Law alone cannot eliminate the concentrated powers or authorized powers from the people who are in a position to secure the citizens in the society which is considered to be free from obstacles known as crime which triggers the citizens physically and mentally. Obstacle known as ‘torture’ has become happening crime in this society. Torture which is actually taking place by the people who are considered to save the citizens from crimes, from the people who are expected to maintain peace and tranquillity in the society. There are several questions which

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are arisen in this situation. Whether citizens shed off their each and every fundamental right as soon as they arrested?

What is the basic meaning of Custodial Death? “Custodial death is defined as the death of a person due to any form of torture or cruel, inhuman or degrading treatment by the police officers, whether it occurs during investigation, interrogation or otherwise.”

The Rule of Law has been inherited and disrespected by the people who are holding rights to arrest the culprits in this society. There are several methods which are always misused such as giving third degree torture to people who are in detention. Basically, custodial deaths have given the chance to question the very system of administration, constitutionality and above all the system of the government i.e., democracy as it gives the citizens of the country such fundamental rights which inherits the feeling of pride amongst leaders and commons citizens of the country. What security such rights give to the people in custody? In fact, it is not anymore about the people in the custody, it is about every citizen if the country. Such atrocities make us question the audacity of the people holding power in our country. Ultimately, according to the essence of the constitution of our country “all lives matter.” The brutality needs to look after. It is high time otherwise in no amount of time there will be days of mockery of the authority which is always about the talk of saviours and fighters. There are basically three types of custodial deaths though we will talking about it commonly rather than focussing on a specific type as all of them have the same amount atrocities and brutality. **Custodial deaths are of three types when examined in detail they are as follows death in a police custody, death in judicial custody and death in defence or paramilitary forces custody. We need to focus on the solutions and legislations which can solve this grave problem.**

## II. POLICIES OF THE GOVERNMENT

Based on the research and various cases it was declared in a discussion that custodial deaths are one of the worst crimes that takes place. The take place either during investigation or during other methods when information is being extracted such as torture or testing mental capability or patience against force.

The various laws which have been formulated and talk about custodial deaths are:

- **Indian Penal Code, 1860** – Section 44, 166, 167, 220, 330, 331, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 376, 503, 506

An important adjustment was made after the *Mathura rape case* and now section 376 (1) penalizes police officers for committing custodial rapes. Whereas, section 330, 331,

342, 348 have been designed and talk about the custodial crime which includes torture and grants punishment for the same.

- **Code of Criminal Procedure, 1973** – Section 41, 49, 50, 53, 54, 56, 57, 58, 75, 76, 154, 160, 163, 164, 176, 313, 315, 357
- **Indian Evidence Act, 1872**- Section 24, 25, 26, 27
- **Constitution of India**- Article 20, Article 21, Article 22
- **Indian Police Act**- Section 7 and 29

These sections talk about suspension and penalty of a police officer which are considered to be as unfit or negligent towards their duties and fail to do them in such scenarios.

The other policies of the government includes that various reports which are made and created should be reported and registered within 2 months of occurrence. Reports such as post-mortem report and various videos that were taken as a course of evidence. A magisterial enquiry is mandatory to be conducted as guided by the commission within the particular time frame.

Since custodial deaths are not considered to be one of worst crimes that could take place, it also arises various questions in minds of the citizens whether they lose their fundamental right to life and liberty once being arrested? And once arrested do they have no option to raise their voice against anything and everything that happens?

Keeping in mind all these policies and concerns of the citizens of India, The government made some policies explaining that no one loses the fundamental right to life and liberty even after being arrested. Some scenarios such as torture take place only in case of very hideous crimes, but that still does not give the power to the police or any magistrate to commit the crime of a custodial death. According to the words custodial it is supposed to mean protective and as a responsibility it has been about the police or any person given the responsibility by fair laws and means who has to obey and is bound by law to protect someone from as a guardian will be held liable if committing any crime that of custodial death.

After the case of Tuticorin a number of provisions were laid down such as police officers are to wear a clearly visible badge at all times, a detailed memo is to be prepared of the arrest that took place, the chance to inform family, friend, relative or any lawyer is to be given to the arrested person, tell the arrested person his rights after arresting him and use of cctv's during hearings.

### III. JUDICIAL APPROACH

#### 1. Nilabati Behera vs. State of Orissa and Ors. (24. 03. 1993 - SC)<sup>3</sup>

The issue of the case was whether constitutional courts while exercising their jurisdiction under article 32 and 226 can grant the remedy of the monetary compensation on violation of fundamental rights in relation to the principle of sovereign immunity?

The petitioner addressed to the Supreme Court under article 32 for the monetary compensation whose death took place during the custody. The petitioner's husband was in custody due to theft. All the reports indicating his death to be unnatural due to all the wounds on his body, the petitioner claimed compensation.

The court cleared that compensation is available as a remedy under public law which is based on the doctrine of strict liability. A claim for compensation on violation of fundamental rights and human rights is available for the said rights. Hence, the court ordered a particular amount of payment as compensation and also from the Supreme Court Legal Aid Committee Board to the petitioners. The court even mentioned that it has all the rights to take appropriate actions against the wrongdoers through proceedings.

#### 2. Joginder Kumar v. State Of U.P and Others 1994 AIR 1349: 1994 SCC (4) 260<sup>4</sup>

*The rights under article 21 & 22(1) of the Constitution should be protected and to assure that they are in the enforcement effectively, the Supreme Court issued such guidelines:*

- The person who is in detention or is arrested should be informed about the rights mentioned under article 21& 22(1) by the police officer.
- The appropriate entry should be made in a diary at the police station about who was informed of the arrest,
- The protections under these articles must be followed strictly.
- The Magistrate under whom the arrest is done should assure that the person in custody should satisfy himself with such rights.

#### 3. Dilip K. Basu vs. State of West Bengal and Ors. (10. 12. 1999 - SC)<sup>5</sup>

The court issued guidelines which has to be followed while the detention and arrest cases. In addition to Constitutional and statutory safeguards the specific guidelines were:

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<sup>3</sup> Nilabati Behera vs. State of Orissa and Ors., AIR SC (March 24, 1993).

<sup>4</sup> Joginder Kumar v. State Of U.P and Others, SCC AIR (1994).

<sup>5</sup> Dilip K. Basu vs. State of West Bengal and Ors., AIR SC (December 10, 1999).

- Details of all work force taking care of the cross examinations of the captured individual must be recorded in a register.
- An update of capture at the hour of the capture ought to be get ready. It should likewise be marked by the prisoner and must contain the time and date of the capture.
- Police must tell a prisoner's time, spot of detainment, and spot of guardianship. Police of the influenced territory electronically inside the time of 8 to 12 hours after the capture.
- A passage must be presented in the Defence Diary at the spot of detainment.
- The "Inspection Memo" must be marked by both the prisoner and the capturing police officer and a duplicate copy must be given to the prisoner.
- The prisoner must go through a clinical assessment by a prepared doctor at regular intervals while in detention.
- Copies of all documents, including the arrest memo, must be sent to the Magistrate for registration.
- Data about the capture and the spot of care of the captured, within 12 hours after the capture and in the Police Control Room Board, must be shown on an obvious notification board.

#### **4. Munshi Singh Gautam (D) and Ors. vs. State of M. P. (16. 11. 2004 - SC)<sup>6</sup>**

The Supreme Court addressed the concern about torture taking place within Indian prisons while stating that:

“The dehumanising torture and brutality doesn’t seem to soften even after the decisions passed through the landmark cases such as “Bhagwan Singh v State of Punjab”, “Pratul Kumar Sinha v State of Bihar”, “Kewal Pati v State of UP”, “Inder Singh v. State of Punjab”, “State of MP v Shyamsunder Trivedi.” It obviously raises the audacity of citizens to question the credibility of law and administration. In fact the landmark case of D K Basu vs. State of West Bengal seems ‘not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody’.”

#### **5. J. Prabhavathiamma v/s The State of Kerala & Others WP(C). NO. 24258 OF 2007 (K) AND CRL. R.P.2902 OF 2007<sup>7</sup>**

This was one of the landmark cases where the two police officers were awarded death sentence by a CBI court for the death of a scrap metal shop worker. In this particular case, the court

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<sup>6</sup> Munshi Singh Gautam (D) and Ors. vs. State of M. P., AIR SC (November 16, 2004).

<sup>7</sup> V. J. Prabhavathiamma v/s The State of Kerala & Others, WP(C) 2902 (2007).

believed that death took place when the person was in custody.

The judge particularly stated that this was a very brutal act committed by two police officers and the situation is very dangerous. This act had the audacity to make citizens lose faith in the law and order administration.

#### **6. Dalbir Singh vs. State of U. P. and Ors. (03. 02. 2009 - SC)<sup>8</sup>**

Under the exercise of the power of section 357(3), Code of Criminal Procedure, 1973 the compensation was awarded and since the order was under challenge in criminal appeals pending before High Court the Court viewed that it is not desirable to release such compensation in favour of the appellant, at this stage as it would lead to multiplicity of proceedings. Hence, the alternative for the same which the Court would be appropriate was to request the High Court for “expeditious disposal of Criminal Appeals”.

#### **7. Mehboob Batcha and Ors. vs. State rep. by Supdt. of Police (29. 03. 2011 - SC)<sup>9</sup>**

The court clearly held that torture in custody and custodial violence is clearly the violation of rights under art 21 of the Constitution and must be protected by following the guidelines under D.K. Basu vs. State of West Bengal with stricter punishments.

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

*Nine police officers' punishment was extended from three to seven years each and section 330 of Indian Penal Code, 1860 was applied. Section 330 basically talks about voluntarily causing hurt to someone for extorting confession or to compel restoration of property. In this particular case, the judge upheld the order and stated that incidents which involve the police tend to erode people's confidence in the criminal justice system. While increasing the punishment the apex court said, “With great power comes greater responsibility.”*

### **IV. RECENT CASE**

The hideous crime of custodial death took place currently in a father-son case in Tamil Nadu. This case is referred to as the Tuticorin case.

According to the facts of the case, P Jeyaraj being the father who was about 58 years of age and Fenix, the son, 38 years of age were the owners of a shop in Sathankulam town of Tamil Nadu. There were strict regulations about lockdown and closing timings of the shops due to COVID-19. As per the law it was the duty of the son and the father to close the shop in the

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<sup>8</sup> Dalbir Singh vs. State of U. P. and Ors, AIR SC (February 03, 2009).

<sup>9</sup> Joginder Kumar v. State Of U.P and Others, SCC AIR (1994).

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

permitted timings which they didn't do. Due to this reason the police officers arrested them and it was heard that their family was assaulted in the police station, which is the first stage to the occurrence of a custodial death. Followed by this incident they were put in jail and were reported as dead after a few days which raised the question directly on the police officers who assaulted and mistreated them.

This is considered to be such a disgrace to the misusing the position and the authority which has been granted to the people who are supposed to uphold the law and order of the country and maintain it.

## **V. RECOMMENDATIONS & SUGGESTIONS**

In order to eradicate this brutality which has proven to be so inhuman of people in authority to conduct it. It has left the nation in shock and the modern era has huge amount of questions to the authority of the country. Awareness is the need of the hour. Citizens need to be aware of their rights when they are into custody and police needs to be aware about their power upon their authority. In fact, the huge question arises here is, if there would me no limitation on powers, would police of our country have the audacity of conducting such torture? Was this all which made us believe that this authority would keep us safe and secure? If no, then there are few recommendations and suggestions with the legislations which can still help to eradicate this kind of heinous crime from our country.

- Fields of ethics needs to be stronger and stricter so that the light of optimism is once again fallen on the police force of our nation.
- Fields of psychology and criminology can counsel the people before selecting them to the police force so as to assure them about their duties and authorities in an appropriate manner.
- Tests like narco-analysis and brain-mapping should be taught to the police force as these scientific and modern technologies can help curb this crime easily.
- Knowledge and physical check-ups should not only be the criteria for selection of police force. Counselling, conducting these tests mentioned above, awareness through staying in the training camps before the final selection should be held in proper surveillance of experts.
- Selection of police force should not be held in bulk. There should be minimal amount of people who should be allowed from first stage to last stage of examinations,



counselling, interviews and physical tests so that the attention of experts is given to each individual in a well settled manner.

- High pressure of political parties needs to be eradicated and the correct procedure needs to be followed to decide the right police officer for the promotion to higher levels.
- The reports of National Human Rights Commission needs to be followed by the officers in power and authority. This will actually eradicate the custodial torture if given more attention by the advisors.
- As the reports checkout the yearly rates of crimes and their reasons with opinions and suggestions as to curb this kind of torture, it has been noticed that these are not being followed in practical working flow of the police force.
- Legislations and amendments which are being passed needs to be assured that it values the awareness, opinions and ethics rather than law alone.
- The reports released by National Human Rights Commission could be pointed out such as for a “Magisterial Enquiry:”
  1. The authoritative enquiry ought to be led at soonest immediately.
  2. The enquiry judge should visit the spot of event, to the colleague with current realities on the ground.
  3. The enquiry judge ought to guarantee that the data arrives at all worried about it, particularly the nearby family members of the person in question.
  4. The authoritative enquiry should cover angles, for example, the conditions of death, the reason for death, the way and succession of episodes prompting passing, and so forth
  5. The enquiry judge ought to inspect and check records, for example, investigation report, posthumous report, the last reason for death, clinical treatment records, and so on
  6. The officer ought to inspect the relatives and different family members of the perished, onlookers, jail authorities, co-detainees, and so on.

There are some of the suggestions which can be put forth in order to eradicate the crime as soon as possible:

- **Enacting Anti-Torture Law**

A separate law should be passed in the legislative framework mentioning specifically about torture and its punishment. There is no statute particularly talking about torture or defining torture specifically.

- **Ratification of UNCAT (United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)**

UNCAT is a basic liberty deal under the survey of the UN. It means to speak loudly against torment or obtuse conduct, yet India has not yet endorsed to it. Accordingly, India lies among the 25 nations on the planet those are yet to affirm with this arrangement. Dr Ashwani Kumar said-"As a dignitary, my head hangs in disgrace that my nation remains in line, not with rest of the 170 humanized nations who have marked UN Convention against torment however with fizzled and semi-bombed authoritarian systems like Sudan and Brunei. This assertion by Dr Ashwani Kumar features the size of the requirement for sanctioning of 'hostile to torment law'.

- **Sensitization of Media**

Media is one of the platforms in today's era which is enacting as a nexus between the people and the government. Citizens of the country access to all the information, current affairs and factual news from media in every form i.e., print media or digital media.

All the encountered crimes which actually relates to the people being in custody specifically has been shown by the media with immense pleasure. This actually leads inflicting thoughts and is very condescending on the part of media. Rather than just thinking about how the citizens of the country will lose faith in the Indian Judiciary and constitutionality, the media has outgrown and made a vague use of the opportunities in various torture cases.

Hence, media needs to be sensitized in its every form possible and show the stark reality to the crux of the torture which actually takes place during the custody. As these instances rises a lot of question on human rights and such brutality need not to be cherished.

- **Vigilant & Supportive Citizenry**

According to our constitution and the system of our Government i.e., Democracy, it is the citizens of our nation who make this country a better place to rule, follow and live. Citizens are the essence of our nation and it is because of them that the country is created with the legislative framework and the law of the land is being followed and respected. If our citizens will be vigilant enough when they hear about torture and brutality happening around them, the people who are actually working in the good faith for the country and its people will lose faith in the

Indian Judiciary and humanity. Hence, citizens play a vital role in the country and the crime can be curbed if they are supportive of the law and awareness.

- **Setting Up Of Inspection Expertise**

The setting up of Inspection Committee is a sort of practical step which is actually possible if the higher-level officers take this step as early as possible so as to assure that all the police officers in power know the ambit of their powers and authority which their position allows. The Inspection Committee can look after the working of the police station of their areas and eradicate the torture or any illegal conduct if being taken place at the police station.

## **VI. CONCLUSION**

All in all custodial deaths are considered to be the worst crime for the reason that this takes place at the hands of those who are meant to protect the country and the citizens of the country. Strict provisions and laws are being formulated keeping in mind the concern of the people. More knowledge about certain terms and our rights help us to make a change in the society and the world a better place. All it takes is one case and one voice to gather the others to act, react and demand. With the growing crime rate it is also important to specify that with authority comes responsibility and with these both comes the answerability. Most of the Indian laws talk about custodial deaths and its provisions and landmark judgements it becomes easier to deliver justice. Custodial deaths and such cases give all of us the message to be aware of our rights and about our law more than just knowing the face of it.

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