



## CUSTODIAL DEATH – “A CURSE TO HUMANITY”

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### **Abstract**

“Custodial torture is often seen as one of the brutal forms of human rights abuse. There are many institutions namely, The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC) and the United Nations to combat this issue but they are opposed by the police always. A recent report against custodial torture across the world discloses a disturbing scenario in India – 1,731 people died in custody in 2019, mostly from weak communities, Dalits and Muslims. Police all across the country are observed using torturous methods in prison which gives an insight into the brutal and shameful act which is being practiced. The report shows a statistics of about 1,606 people who died in judicial custody and more than 100 people who lost their lives in the police custody as well. This paper focuses on the ideas of custody and how the law enforcement authorities should be held accountable to their crimes and further training and sensitization must be provided on the basis of science and sound morals so to promote legal principles among the masses. The paper's main objective is to examine the history of police brutality, death under custody; to inquire into which sections of society are vulnerable to illegal detention and abuse and to identify the cases of custodial violence using the provided statistics in several reports provided.

**Keywords: CUSTODIAL TORTURE, CUSTODIAL DEATH, COMMISSIONS, LAWS, GUIDELINES, COMPENSATION**

### **Research Methodology:**

The data used for the study are collected from secondary sources mainly from published papers, news, articles, and various search engines.

### **Introduction**

The custodial, without any doubts is actively practiced as part of routine procedure to extract confessions from suspects and many a time, to manipulate the truth. The concept of custodial death is not new for the Indian society. It is not something new that people are falling prey to it. This practice is being followed since the British era. Prisoners have always been denied their basic fundamental rights and are tortured too mercilessly. The police administration is continuously criticized for custodial deaths, torture, and the practice of unauthorized means during the investigations. The word custody generally involved “**guardianship and protective care.**” No sinister symptom of violence takes place in custody, even when applied to specify arrest or detention.

Custodial deaths cannot be and must not be viewed in isolation. There are various caste and religious minorities who are under the privilege of punishment exemption, so when these law enforcement agencies become the source of violence, it becomes a threatening situation of abuse of authority and discrimination to these privileged people and all of this is backed by a silent state. India is considered to be one of the world’s biggest democracy and it is a very sad state to observe that the people who are supposed to



be our protectors become a threat to our protection only. It becomes very essential to mention that India has yet to ratify the 1987 United Nations Convention against Torture. The silence of the concerned authorities is a perfect example to show how so many cases of custodial deaths without a perfect reason is leaving them unbothered and how thick they are to institutions of justice and law.<sup>1</sup>

***“Cases have been observed where a police arrests a person without any warrant to which the investigation is linked and the arrested person is subjected to brutal torture in order to obtain information for the purpose of investigation and in all these circumstances, the injury which has taken place to the person arrested has many times resulted to his death, - a custodial death”***

Simply we can say that death of any person in custody whether Police or Judicial will amount to Custodial Death.<sup>2</sup>

### **Causes of Custodial Violence**

There are robust legal frameworks that protect the rights of the accused in judicial custody. The worst form of police excess is of course causing death to persons in custody. Many organisations including our own National Police Commission have commented on the barbarous custodial violence and deaths in India. The brutality by the police has not only resulted in third degree methods but also to custodial rapes and deaths. Custodial rapes have led to a series of Amendments namely to The Code of Criminal Procedure and Indian Evidence Act. Many such incidents may not have seen the light of day and may have gone

unreported and unpunished. The few but growing number of cases in which the erring police officers have been brought to book exhibit the utter callousness of the pachyderm police system in India.

The custodial death and custodial violence is not only limited to the use of force because there are several other factors also responsible for the same. Every police officer must know all the reasons for custodial death so that they may take precautions and can save the custodial death.<sup>3</sup>

### **The detail of reasons custodial death is being given below.**

1. The police makes no proper search of the person who is arrested and no whereabouts is being looked into before his entry in the lock-up of the police station and the arrested persons have committed suicide in the lock-up by cutting their nerves, by hanging, taking poison or by burning themselves
2. No other method of interrogation is being adopted except using force.
3. No preparation is being made beforehand for interrogation.
4. Involvement of such police officers of the same or other police station in interrogation who are not concerned with the arrest and whole investigation and they use to cause more harm to accused persons because they are not involved in interrogation in writing.
5. No medical aid is given or examination of injured accused persons is being conducted immediately by the police and death occurs in police custody due to slackness of the police officers.

<sup>1</sup> <https://lawlex.org/lex-pedia/custodial-death-a-curse-to-humanity/24271>

<sup>2</sup> (I.B. Thockom and R.S.Verma, “Law relating to Custodial Death and Human Rights”, 1st Ed., 1999, p.3.)

<sup>3</sup> <https://thewire.in/rights/custodial-deaths-in-india-are-a-cold-blooded-play-of-power-and-class>



6. Lack of patience in police personnel because they want immediate confession of the accused. They use force immediately if the accused person refuses to admit the guilt.

7. Lack of supervision during interrogation by the senior officers. The officers used to come at the police station after the death in police custody.

8. There is this traditional method or say the habit of using physical force on the prisoners which still exists in the department and it is proved by the fact that the police have used force not only with hardened criminals but they have used force with those persons who have no previous criminal record and they died in police custody.

9. The death in the prison due to suicide committed by the accused in the lock-up which is the result of misbehaviour of police personnel with the arrested person

10. There exists no due respect to the law and basic fundamental rights. There is an unhealthy competition among the police personnel of being successful by adopting wrong methods of using force which results in custodial death.

### **Categories of Custodial Death**

It is identified that there are six main categories of in-custody deaths:

- (a) Officer Negligence
- (b) Offender Actions
- (c) Third Party Action
- (d) Accidental
- (e) Officer Misconduct
- (f) Excited Delirium.

It is believed that these broad categories cover all instances of in-custody death. Inside each category there are several different

“sub-categories”. In some instances the numbers of these really are subject only to a person’s imagination of how to commit the act. If an agency is not having a proper published written policy concerning how such instances are to be investigated, it opens the agency up to public criticism and possible civil liability. An agency should have a policy that details how an in-custody death is to be investigated. It should detail who is going to do the investigation and what notifications have to be made and who is responsible for making them. The policy should be specific enough that it takes into account the different variables of the six categories mentioned above. But, it should also be broad enough with the knowledge that very few incidents go by the book. It should give the responsible supervisors some flexibility to adjust their response as the situation dictates. It is suggested to have a bifurcated investigation to all in-custody deaths. The first being the criminal investigation. The second being the administrative investigation. Legally these investigations cannot complement each other. The whole purpose of these investigations is to find out what happened, who is responsible (if anybody), what can be done to prevent it in the future and to retain the public trust. Without the trust and support of its citizens no police agency can function.<sup>4</sup>

**OFFICER NEGLIGENCE:-** This is one such broad classification that includes a wide range of like situations. It is basically all about the involvement of a police officer who is very much aware of the existing situation and still fails to take the due actions required

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<https://journals.sagepub.com/doi/abs/10.1177/0025817216630511?journalCode=mljc>



which can protect the arrested person from the threat posed to his life.

**OFFENDER ACTIONS:** - This category is divided into three sub-categories:

- (i)Suicide
- (ii)Unintentional Suicide
- (iii)Medical Conditions.

Suicide in pre-trial detention is much high than the general population. It is being observed by the statistics that the rate of death is almost three times as high as the rate of suicide in prison as per The AELE Law Journal, 2007.

**ACCIDENTAL DEATHS:** - This is a broad sub-category that tries to encompass a large body of accidents. Believe it or not, inmates do die sometimes from unassisted falls. There are also times when an inmate might die from some other type of accident inside the holding facility or while outside in a recreation area. In all these cases just to have a clear cut picture, a proper investigation needs to be done to make sure and conclude that such deaths were not a result of criminal or otherwise improper activity.

**THIRD PARTY ACTIONS:** - Prisoners are not just at risk when being escorted to and from police stations or jails. They are also at risk when sitting in the rear of an officer's vehicle. Suspects have been shot while confined in the rear of a patrol car.

**OFFICER MISCONDUCT:** - This category is alleged more often than any other. This category includes officers beating, torturing, or in some way physically abusing a prisoner in their custody. This does not include justifiable force used to affect an arrest or to control a combative prisoner. This is when the officer abuses the prisoner using

physical force when the prisoner is compliant and non-combative. This also involves officers who intentionally use deadly force on a suspect already in custody when they know it is not justified.

**EXCITED DELIRIUM:** - This is a state of hyper-psychological activity that has been found to be present in otherwise unexplained in-custody deaths. Police usually receive a call to the subject who is exhibiting extremely unusual behaviour. The person may be nude or partially clothed, sweating profusely and in an agitated state. These usually culminate in the officer being forced to use some measure of force to bring the situation under control. The officer will then notice the suspect slipping into a sudden relaxed state with the officer then noticing that the suspect is not responsive and in cardiopulmonary arrest. Even with prompt emergency medical treatment, the suspect rarely recovers. Leaving the officers and the community asking questions about what happened and why.<sup>5</sup>

#### **Investigation of In-Custody Deaths**

The death of any person when he is in prison or when he is being taken to the prison, can claim for some action against the policemen like civil litigation or the suitable criminal charges which can be levied and, on occasion, riots. Some sections of our society are doubting of police. On occasion, this disbelief is justified. However, in most instances, there is no misconduct. The situation is often aggravated by the news media, which seems sensation-driven. It is very essential to have a proper investigation and thoughtful analysis of an incident. The public and the media look for simple answers to complex problems. They often confuse

<sup>5</sup> <https://ujala.uk.gov.in/files/Ch10.pdf>



proximity of an action with causality, an error in logic identified by Aristotle more than 2300 years ago. If an investigation into the death does not satisfy their initial assumptions, they often claim conspiracy or “cover-up.” In-custody deaths fall into three categories, temporally: those which happens at the time of arrest, those while being transported to jail or a hospital, and those while the deceased is a resident of the jail. There can be several reasons of death which may be a natural disease, accidental trauma, suicide, homicidal trauma, or the sequelae of a cascade of natural physiological reactions to stress, often aggravated by drugs. No matter how the case presents, it is always best to treat all cases as if one is dealing with a homicide in which there will be subsequent judicial proceedings. It is always better to do too much in such cases than too little. The investigation which is related to the medical field of an in-custody death should ideally have three components: the investigation, the autopsy, and subsequent laboratory tests. But, why have investigations at all? Are there not instances where the cause of death is obvious and no investigation needed? Why do we need to waste the precious resources for the purpose of investigating a death of a criminal when his death is not going to affect anyone in any way?

It is believed that any death which occurs while that person is in the hands of a police department should be investigated. This investigation should be conducted in two parts. One should be the criminal side of the investigation. The other side should be administrative. This should not, however, be a witch hunt. The investigation should be specific in its scope. This type of bifurcated investigation protects the rights of the officer(s) involved, the agency administration and the appropriate city or

county government and ensures that the criminal investigation is not compromised. It also shows the citizenry that the department is serious in investigating its officers’ actions and making sure that its officers are conducting themselves in a manner that brings credit to the department and thus the community as a whole. The criminal investigation should start as soon as the death is discovered. In most instances this will involve an investigator either tasked from that department or from an outside agency with which the department has a mutual aid agreement. Some departments who are not large enough to have full time investigators have brought in assistance from their state police agency or investigative bureau. This actually can have a twofold positive effect. One that there is less allegation of a cover-up. Two, it increases the public trust that the original agency is doing all it can to find out the truth. Suicides should be treated as homicides till the evidence clearly shows the death was a suicide. The scene should be treated just like any homicide scene with restricted access and the orderly and systematic collection of forensic evidence. This may require the relocation of several inmates who had shared a cell with the deceased. Any act or omission that might raise the ugly head of cover-up allegations should be avoided. All witnesses and officers involved should be interviewed. If the situation is related to that of a traffic accident, the services of an accident Reconstructionist should be called upon to conduct or assist in the investigation. If he were to find that a criminal act, as opposed to a traffic offense, was the cause of the crash, the Reconstructionist would then notify a criminal investigator. Otherwise, the Reconstructionist would be all that was necessary to complete the investigation. Even



in the situation of a natural disaster, a complete investigation needs to be conducted to insure that the death happened not because of an opportunistic foe taking advantage of the confusion of the situation. While this investigation may not be exhaustive it would be required to insure the family and public that no foul play was involved. While prisons may not investigate natural deaths the way they would an unexpected death, this state's prison system still the deceased body to the state medical examiner for autopsy to ensure that no previously undiscovered crime was involved. This is a good example for agencies which have their own jails. Any inmate who dies of any kind of apparent occurrences must be enquired into unless and until the foul play is ruled out. Persons who have well documented medical conditions that are terminal in nature and have reached the time when death is eminent are not going to stay in a jail awaiting adjudication on some criminal charge. They will be released and sent to a hospital or residence for hospice care.

The administrative investigation has several different purposes. The first is to determine if the officers involved violated any departmental policies. If the officers itself will violate policy, then what kind of violation is it anyway? Is it a violation that has no bearing on the death but that needs to be addressed? Or, is it a violation that shows the officer was negligent in his duties and who's continued employment needs to be re-evaluated? Even though an officer may not be guilty of any criminal offense, he may be found to have violated departmental policy so egregiously that it merits severe discipline or termination. The administrative investigation

should also look into the capability of departmental policy. This will help to determine if a policy change might prevent this same kind of death in the future. Training of the employees must be included as a part of this investigation. This can help in developing training for officers that might let them recognize certain symptoms of medical conditions and react accordingly, possibly saving a life instead of unintentionally taking it.<sup>6</sup>

### National Commission

#### National Human Rights Commission (NHRC)

In 1993 a commission was established for the protection of human rights, National Human Rights Commission with the formulation of Protection of Human Rights Act, 1993. NHRC contributed to a higher extent for establishing a robust institution to maintain the human rights of citizens while compensating for any infringement. The vision and mission of the NHRC are, inter alia, to protect people from the atrocity and torture of state, spreading of human rights awareness amongst masses, and encouraging the efforts of all stakeholders in the field of human rights literacy at national as well as international level.

Custodial violence and torture is so flourishing in India that it has become almost routine. It epitomizes the worst form of excesses by public servants delegated with the duty of law enforcement. The Commission regards crimes like rape, molestation, torture, fake encounter in police custody as manifestations of a systemic failure to protect the rights of human

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[https://shodhganga.inflibnet.ac.in/bitstream/10603/2714/13/13\\_chapter%204.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/2714/13/13_chapter%204.pdf)



beings of one of the most vulnerable and voiceless categories of victims. Therefore, it is deeply committed to ensure that such illegal practices are stopped and human dignity is respected in all cases. Besides awarding compensation to the victims or their next-of-kin, the Commission's efforts are also geared towards bringing an end to an environment in which human rights violations are committed with impunity under the shields of "uniform" and "authority".

#### **Guidelines issued regarding intimation of custodial death by NHRC**

NHRC report of 2017-18 deals with the problems relating to civil and political rights as well as deaths in judicial or police custody, high handedness of police, illegal detention, death in police encounters.

The Commission has issued various guidelines in this regard. One of such guidelines is that within 24 hours of any death in police or judicial custody must be reported to the commission. Though all custodial deaths may not be crimes or the results of custodial violence or medical negligence, it is important that no assumption is made without thorough enquiry and analysis of reports like inquest report, post-mortem reports, initial health screening report, magisterial enquiry report, etc. Compliance of the guidelines of the Commission by the State authorities, therefore, plays a crucial role in quick disposal of cases relating to custodial deaths. However, it has been seen that some deaths are reported after considerable delay or not reported at all, and in many cases reports are forwarded to the Commission only after issuance of conditional summons to the authorities concerned.

In the year 2017-18, the Investigation Division of NHRC has dealt with a total of 5,371 cases including 2,896 death cases in judicial custody, 250 death cases in police custody and 2225 fact finding cases. The Division have also dealt with 277 cases of death in police encounters.

#### **Guidelines or procedures which is followed in cases of deaths caused in police action:-**

(a) The police officer shall enter the information regarding the death of any individual in an encounter of the police in the appropriate register.

(b) If the police officer belongs to the same police station whose involvement is in an encounter party, whose action results in the death of an individual, then it is necessary that such cases should be investigated by some other investigating agency, like state CBICID.

(c) When any particular complaint is lodged against the police for a criminal act then an FIR will be registered under the appropriate sections of IPC and investigated by a specialized agency or by the state CBICID.

(d) Almost in all the situations of custodial deaths, when it comes to the work of the police force, a magisterial enquiry is claimed in the due course of three months. For the purpose of inquiry what needs to be done is investigate the relatives of the deceased along with the eye witnesses if any of the incident. All this process needs to be carried out in order to examine the situation. The inquiry also includes all the records of the police station.



(e) If any of the officers will be found guilty for any offence related to the death of an individual in the custody then according to the guidelines of NHRC, all those officers will be punished and strict procedure will be taken against them.

(f) Almost in all the situations of death under the police authority in the states will be reported directly within 48 hours to the commission with all the details about the death like date, place of occurrence of death, fact, investigation agency and the most importantly circumstances of death i.e. self-defense in encounter.

(g) Almost in all situations of death under the police authority in the state, a second report will be submitted to the commission in due course of three months providing the information of post mortem report, inquest report and magisterial enquiry including names and designation of police action, result of forensic examination, weapons report of examination by the expert which was used by the deceased.

#### **Guidelines that was given by NHRC for the magisterial enquiry in case of custodial death**

(1) Magisterial enquiry is to be established as soon as possible by the enquiry magistrate whose duty is to visit the crime scene and make an effort to identify the witnesses who are likely to have been present at the scene of crime and try to record their statements.

(2) The magisterial enquiry cover the important aspect like circumstances of death, the cause of death, sequence of incidents leading to death, competency of medical treatment, the enquiry also consist of any action of person responsible for death or any

doubt of foul play and any death that caused due to the act of public servant.

(3) The enquiry magistrate will inspect and validate the subsequent records.

a) Inquest Report

b) Post Mortem Report

c) Viscera Analysis Report

d) Histopathological Examination Report

e) Final cause of death

f) Medical treatment records

g) Inquest/Investigation report of the police

#### **International Instrument**

The level of torture is so much that it is always being condemned on not only national but even on international levels. The eradication of torture has always been publicly supported too. The prohibition of torture is done under the concept of “jus cogens”:- which is a customary international law. It is considered as a superlative degree of law under customary law and supersedes everything that uses torture. A further discussion on the prohibition of Torture is done as follows under various instruments :-

**1. Universal Declaration of Human Rights (UDHR):** After the enormity of World War II, the UN general assembly have taken steps to protect the humans from being touched and started drafting the UN general assembly under which the UN assembly have included article 5 which speaks about the prohibition of the use of torture by the public servant. This ban on torture by the international instrument opens the way for other human rights treaties to protect the rights.



**2. International Covenant on Civil and Political Rights (ICCPR):** The provision which were added in the UN assembly for prohibiting the torture in the UDHR made its space in this convention, as adopted by the United Nations in 1966. 'Article 7' of this Covenant states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The provision of ICCPR was similar to the provisions of article 5 of UDHR. The Human Rights Committee in General comment went on further to comment on article 7 of ICCPR and specified that the purpose of this provision is to safeguard not only the individual from physical cruelty but moreover the self-respect and psychological veracity of the person. The pact was signed and approved by 153 countries to avert the use of torture in their dominions.

**3. Convention against Torture and Other Cruel, Inhuman or degrading treatment or Punishment (UNCAT):** The UN General assembly approved this agreement in 1984 with the intention to fight against practice of torture more active in all countries. In total, 136 countries approved this convention including India.

• **Amnesty international**

Amnesty international have been vociferously clamouring about abuse of human rights in India by police and paramilitary forces. The broad head under which the police excesses have been reported are torture, custodial violence, custody gang rape, fake encounter and lack of sanctity of official records. The amnesty report 1992 describes in detail the pattern and practice of torture, including rape, and deaths in custody in India.

• Amnesty International has recommended that the following steps should be taken to safeguard the rights of humans in India, to halt the practice of custodial violence or torture and to create effective institutional framework for its prevention.

(a) Adopt a formal rule for the protection of human rights.

(b) Investigate without any prejudice for each and every charges of torture.

(c) Bring the offenders to justice.

(d) Strengthen safeguards against torture.

(e) Inform prisoners of their rights against the torture in police or judicial custody.

(f) Train the police department and security forces to maintain human rights.

**Compensation to the victims**

(a) Provide fatalities with medical treatment and rehabilitation.

(b) Investigate the causes and pattern of torture.

(c) Strengthen India's international human rights commitments

**Prevention of Torture Bill, 2017**

India, being a third world country, signed the "Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or punishment" (UNCAT) back in 1997 but still after such a long time of 20 years, Indians has not approved it, which is considered as the utmost essential facet of obligation and infers that India will take steps legally to make



Indian Laws in accordance to this UN Convention.

A bill on Prevention of torture was presented in the Parliament for the first time in 2008 for their consent but after its evaluation, it was found that it does not contain the sufficient provisions so because of that it was decided to send the bill to the select committee. The select committee after revising the bill made a draft which was represented to the Upper House of parliament in 2010, still, it got stuck over there ever since.

In 2016, a former union minister of law filed a petition in the Supreme Court of India for the India's compliance to UNCAT and to make the dead bill of 2010 come to life. During the trial in the apex court, the Law Commission of India submitted its 273rd report which suggested the government to approve the UNCAT and further suggested the "Prevention of Torture Bill, 2017". On their approvals, the Bill was over presented in 2017 and it is still being discussed in the parliament. This all controversies shows that it has become nothing more than a political agenda to gain votes and it was just seen on the manifesto of Congress party for the upcoming Lok Sabha elections of 2019. Congress party promises the public to pass this bill once they come to power.

### **REMEDIES AGAINST CUSTODIAL TORTURE: -**

The two approaches are legal regime and judicial precedents.<sup>7</sup>

### **CONSTITUTIONAL SAFEGUARDS**

It has been observed in a variety of judgements that the judicial custody of a

human being does not deprive him of fundamental rights.

**Article 20 of The Indian Constitution:** There exists a right which can be used against the conviction of offences and that right is served through Article 20 of The Indian Constitution.

**Article 21 of The Indian Constitution:** This article is inserted in the Indian judiciary to protect the right to be free from torture.

**Article 22 of the Constitution of India:** There are four basic fundamental rights which is provided by Article 22 of The Indian Constitution in reference to the cases of conviction which includes that the person being arrested needs to be informed the reason of his arrest, they should be given the chance to choose a legal practitioner for their ease and prevention of detention laws. Within the 24 hours of arrest, they must be produced before the nearest Magistrate.

### **Other Statutory Safeguards:**

**Indian Evidence Act, 1872:** If a person makes a confession to a police officer about his offence then that cannot be treated as a proof against the person who has been accused of any offence. It is also essential to note that even if the confession is made due to the threats of law enforcement personnel, it would be considered irrelevant too.

**Code of Criminal Procedure, 1973:** Policemen are often seen using brutal methods against the arrestee. To protect them from the brutality and torture, Section-46 and 49 of The Code of Criminal Procedure comes into picture.

**Indian Police Act:** There are many police officers who are very negligent in doing their duties. They do not discharge them the way it is required correctly. To provide the rights to

<sup>7</sup> [https://link.springer.com/chapter/10.1007%2F978-1-59745-015-7\\_10](https://link.springer.com/chapter/10.1007%2F978-1-59745-015-7_10)



people for the acts of such law enforcement personnel, Sections-7 and 29 of Indian Police Act is given emphasis.

**Indian Penal Code (IPC), 1860:** Rape is one among the heinous crimes that the mankind can go through. There are strict laws for this too. The Mathura Rape case has already shaken the whole country. After this occurrence, an amendment was brought in that is Section-376(1)(b) in The Indian Penal Code which penalises and punishes the policemen who commit the shameful act of Custodial Rape.

**Sections 330, 331, 342 and 348 of the IPC** are framed in such a way that it deters a police personnel who is given the power to arrest someone and interrogate to resort to third degree methods.

#### Compensation to Custodial Death

What are the remedies available to the victims of police excesses that, aside from the heinous crime of torture, also include wrongful confinement or detention for indefinite periods of suspects still awaiting formal charges and a fair trial?

In the Delhi High Court in Babloo Chauhan vs State Government of NCT, the court dealt about the issues of fine and awarding of default sentences without any proper reason. It was seen that the innocent people are put up in the judicial custody without a valid reason as well as the lack of investigation even though when the appeal is taken up the innocent persons are released but that takes place after long years of imprisonment which should not happen. In The Law Commission Of India, the Court decreed that they should undertake a comprehensive examination of the issue of “relief and rehabilitation to victims of wrongful prosecution, and incarceration”.

The Law Commission released its report in August 2018. It is a lengthy, scholarly and passionately written document that makes sweeping recommendations for reforms and remedies as outlined in my previous report on this subject. What is noteworthy in the report is the international perspective based on various United Nations Conventions on torture and wrongful incarceration. It cites examples of various other countries which have developed legal frameworks for remedying such miscarriage of justice by compensating the victims of wrongful convictions, providing them pecuniary and non-pecuniary assistance.

These frameworks, the report says, “The state should compensate the said victims and they must also put forth the substantive and procedural aspects which is able to give some effect to their responsibility and the quantum of compensation.”

#### Landmark cases

Several guidelines have been listed out by the Indian Judicial system to control the brutal abuse of power by the police personnel. There are ample number of landmark cases on this issue.

**In the case of D.K Basu vs. State of West Bengal (1997)**, a letter to the chief justice of India was submitted by the executive chairman of Legal Aid Services, who is also registered as a non-political organization worker. The letter was in reference to the deaths which takes place in judicial custody and police lock-ups. It was stated for a serious investigation into the matter and the introduction of a new concept that is “custodial jurisprudence”. The letter further mentioned about the negligent functioning of the concerned police authorities and that is one of the major reasons why several



custodial deaths goes unpunished. The letter was taken as a “writ petition” looking into the importance of the raised issue. Long back there was no suitable channel which could be followed in the cases of custodial deaths. After the writ petition a notice was also given to the respondents.

The Supreme Court after a proper investigation came up with certain guidelines for the investigation of case by the police officers. They are as follows;

(a) According to the provisions of the code, after the arrest of a person by the police officer, it becomes their duty to handle and then investigate the case in a fair and correct manner.

(b) A memo must be prepared by a police officer and all procedures should be followed without fail. If a person needs to be arrested, there exists the rights of the accused to have either of his family members or friends during arrest. The police personnel without fail must give the time and place of the arrest of accused.

(c) The notification about the arrest of the accused must be given to either the family or friend within 8-12 hours of arrest.

(d) The diary should be maintained by the officers who disclose the date and time at which the accused was arrested and other required information of family and friends.

**In the case of Sunil Batra v. Delhi Administration, (1978)** it was observed by the Indian judicial system that inhuman torture and treatment is against the Article 21 of the constitution of India which includes the right to live with human dignity. The rights provided under article 21 is not only limited

to being a fundamental right but it is also extended being a human rights as well

**In another case of A.D.M Jabalpur v. Shiv Kant Shukla, (1976)** it was observed by Justice H.R Khanna observed that a person can never be denied his fundamental right to life and personal liberty. The term life was provided with another meaning which was not only limited to mere existence.

**In the case of Khatri v. State of Bihar, (1980)** the supreme court held that in situation wherein 30 prisoners were blinded by pouring acid by a police officer is something which cannot be condemned. The officer must be punished for violating the provisions of Art. 21 of Indian Constitution.

**In the case of R.P Kapur v. State of Punjab, (1960),** the SC held that if the officer is investigating a case, then he should do his duty without resorting to brutal and heinous methods. A fair and systematic method must be adopted for the whole functioning.

**In the leading case of Munshi Singh Gautam v. State of Madhya Pradesh, (2004)** The honourable SC of India threw light amid the increasing cases of judicial violence. A lot of concern was shown towards this issue. It was stated that the rapid increase, the nation as well as its citizens are put under a dangerous threat and their lives are in danger when they are handed to the police in criminal cases. This not only poses a threat to their lives but violated and denies their lives but violated and denies their basic fundamental rights too.

**In Prakash Singh v. Union of India, (2006)** the Hon’ble Supreme Court of India stated that a fair investigation must be ensured by the state and suitable steps should be taken by



the government in order to bring the reforms in the nation for a smooth functioning of the society. There must be a system where the rules and regulations should be abided by properly by the citizens.

### **RECENT INCIDENT: -**

The recent death of a father-son duo from Tamil Nadu in the judicial custody has sparked anger across India. It includes death, rape and torture. What has happened in Tamilnadu's Tuticorin is worse than some of the most violent cases India has witnessed (since the Delhi gang rape case in 2012 for which 4 people involved were hanged. Tamil Nadu has imposed a strict lockdown to curb COVID-19.

The family members of the accused duo has alleged that the father and the son were brutally tortured and assaulted in the police station. Few days later after this incident took place, they were declared dead in the judicial custody. For the same purpose, an amendment was brought in the Section-176 of The Criminal Procedure Code and it was created for investigating custodial deaths.<sup>8</sup>

### **Analytical Analysis of Custodial Violence**

Custodial deaths and Custodial Violence is said to be one of the worst crimes a democratic and a civilised society can witness. The question which arises is “When a policeman arrests somebody, does that implies that the citizen has lost his fundamental right to life”? The answer would be probably no. It is true to say that the crime should be controlled but for that a realistic approach must be done. There should be a

proper way as to how a balance must be maintained between the basic fundamental rights given to a human being and the interests of society to tackle the crimes in a positive way without denying anyone their basic human rights. (Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260).<sup>9</sup>

### **Conclusion with Suggestions**

- (a) **Ratification of The UN Convention against torture-** It is high time and India must ratify The UN Convention against torture. Doing this will help us to do a channelized review of all the measures, ways, practices and arrangements for the judicial custody. It will look into the methods as to how the arrested persons are treated in the prison and. This will give a clearer picture of any brutal form of torture if used inside by the law enforcement personnel. It will also help to set a mechanism relating to the compensation of the victim besides institutions such as the Board of Visitors.<sup>10</sup>
- (b) **Police Reforms:** Giving emphasis on Police Reforms, it is very essential to have a proper set of guidelines whose focus should be to target the officials and formulate a policy on the education and proper training of them. A senior police official must interrupt in between the cases looking at the condition of the situation. If a lower rank person is using brutal and torturous methods, it can be looked on and prevented with the interruption of the senior officials. This will also create a positive image of the authorities in the minds of general public.
- (c) **Access to Prison:** When it comes to the access of prison, the independent and

<sup>8</sup> <https://www.indialegallive.com/top-news-of-the-day/making-the-state-culpable>

<sup>9</sup> [https://www.researchgate.net/publication/332696526\\_Police\\_Reforms\\_against\\_Custodial\\_Violence\\_in\\_India\\_Past\\_and\\_Present](https://www.researchgate.net/publication/332696526_Police_Reforms_against_Custodial_Violence_in_India_Past_and_Present)

<sup>10</sup> <https://thewire.in/rights/custodial-death-judicial-inquiry-crpc>



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qualified persons must be allowed a regular and an unrestricted access to the judicial custodies for the purpose of inspection and interrogation.

- (d) **Installation of CCTV Cameras** must be done in order to know the real picture of the whole investigation process.
- (e) **Surprise Inspections:** The nonofficial visitors must also be made compulsory. This should be done as a prevention against the judicial violence. The same has been suggested in one of the landmark judgements by The Supreme Court that is in The DK Basu Case of 2015.

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