



# Custodial Violence

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### INTRODUCTION

In the legal parlance the term 'Custody' is defined as any point in time when an individual's freedom of movement has been

denied by law enforcement agencies, or during arrest, prosecution, sentencing, and correctional confinement [1]. However at times, the criminals taken in custody are subjected to torture by the police and also suffer death. These are known as custodial violence. The Article 21, which is one of the provisions in the Constitution of India, also lays emphasis on the fact that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Even the convicts, under trials, detainees, and other prisoners in custody cannot be denied this precious basic rights.[2] and the provisions of the Prisons Act, 1894 contains the provisions for the welfare and protection of prisoners. Constitution of India does not expressly provide the provisions related to the prisoners' rights but in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*, it was held that the Articles 14, 19 and 21 are available to the prisoners as well as freemen. Prison walls do not keep out fundamental rights. Whenever death occurs in custody, it raises public concern and attracts the attention of media. Each time the death is not due to violent causes but it may be due to natural causes or due to inadequate medical facilities and

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diagnosis, or negligent behaviour of jail authorities or may be due to physical abuse and torture.[3] In most of the countries using force or violence is prohibited by law and also the international treaties signed by them prevent them from doing so but even after those men, women and even children are facing torture in almost all the countries of the world. A problem of increasing occurrence and dislike had been the methods of interrogation and torture held upon prisoners and detainees. Prisoners held in custody, by police or by prison authorities, retain their basic constitutional right except for their right to liberty and a qualified right to privacy, but, there is no formal public scrutiny of in-prison deaths and under such situations many avoidable factors leading to death remains unexplored . Given this context, the purpose of this paper is to critically review physical violence against the detainees in police custody (i.e. police lock-ups at police stations)in IndiaThrough this paper the researchers have tried to discuss the reasons of custodial violence, look into the perspective of our courts in this matter and the methods to curb it.

## BRUTALITY IN POLICE CUSTODY -THE REALITIES[1]

These below mentioned were cases related to custodial violence

### Physical Torture:

- Rajiv Rattan was confined at Kharar police station (in the state of Punjab) for two weeks. While in custody, he was tortured and sustained grave injuries that culminated in the fracture of the neck of his femur bone, making him permanently disabled (Times of India, December 5. 1999).
- Milan Sengupta was picked up by the police on December 4, 1999, and was detained at Sadar police station in Patna (in the state of Bihar). In custody, the police beat him up mercilessly resulting to a bone fracture on his left leg (Times of India. December 11. 1999).
- On January 19,1994,28-year-old Udayan was arrested and taken into custody at Mannarghat police station, Palakkad district (in the state of Kerala) allegedly for carrying counterfeit currency. Merciless beating by



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police personnel resulted in his death the following day (Amnesty International, 1994b).

### Rape:

- On the night of July 13, 1996, several police officials picked up 18-year-old Nisha Devi and detained her in police custody in Nangal Kahadar village, Etawah district, in the state of Uttar Pradesh. The same night, while in custody, she was raped by more than one police officer to disclose the whereabouts of her brother-in-law whom the police suspected of a robbery that took place two days ago (Amnesty International, 1997c).
- On May 5, 1995, Devika Rani, a 45-year-old female resident of Ludhiana, in the state of Punjab, was taken from the Civil Hospital by the police; she was visiting her husband who was undergoing treatment at the hospital. Her 18-year-old son, Rajesh Kumar had earlier been arrested and was in police custody at the Atam Park police post. Mrs. Rani was taken to the same police station. In custody, she was tortured and molested by an Assistant Sub-Inspector, the Head Constable, and two other men in the presence of her son; this was done to coerce her confession about her son's involvement in a criminal case. She was kept in wrongful confinement for six days, and was finally released from the police post on May 11 at 9:00 pm (Amnesty International, 1997 c).

### Custodial Death:

- On June 19, 2000, 25-year-old Lalan Chakraborti died in police custody at the Bolpur police station in Birbhum district of the state of West Bengal. Consequently, a judicial investigation has been ordered by the Calcutta High Court (Anandabazar Patrika, June 19, 2000).
- On April 16, 2000, 26-year-old Srichand was taken into custody at Modi Nagar police station in the state of Uttar Pradesh, concerning a robbery case. He was tortured to death by the Uttar Pradesh Police; the police brought his body back to his home on April 26, 2000 (The Hindustan Times, April 27, 2000).

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## **SUGGESTIONS TO CURB CUSTODIAL VIOLENCE**

Suggestions to prevent custodial violence are as follows :

- By providing 24/7 medical facilities to prisoners and conducting full body checkup for every 2 months.
- CCTVs should be installed inside the lock-ups .
- Independent and non-official persons should be appointed to conduct regular and random inspection of police stations and prisons .
- New laws should be made by legislation for prisoners .
- Open prisons should be increased.
- Prisoners should be given training and they should be made skilled ,so that after leaving prison this skill may be useful for prison to earn income for his/her livelihood.
- Training institutes are required to be opened in every state which would train prison officials especially on how to deal with high risk offenders. Currently there are only three dedicated prison training institutes which are in Chandigarh, Kolkata and Vellore respectively.

### **CASE LAWS**

#### **D.K. Basu v. State of West Bengal, (1997) 1 SCC 416**

DK Basu, The Executive Chairman, Legal Aid Services, West Bengal, a non-Political organisation on 26.08.1986 addressed a letter to the Chief Justice of India drawing his attention to certain news items published in the Telegraph Newspaper regarding deaths in police lock up and custody. He requested that the letter be treated as a Writ Petition within the 'Public Interest Litigation' Category. Considering the importance of the issues raised in the letter, it was treated as a Writ Petition and notice was served to the Respondents. While the Writ Petition was under consideration, one Mr. Ashok Kumar Johri addressed a letter to the Chief Justice drawing his attention to the death of one Mahesh Bihari of Pilkhana, Aligarh in Police Custody. The same letter was also treated as a Writ Petition and was listed along with the Writ Petition of D.K.Basu. On 14.08.1987, the Court

made the Order issuing notices to all the State Governments and notice was also issued to the Law Commission of India requesting suitable suggestions within a period of two months. In response to the notice, affidavits were filed by several states including West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra and Manipur. Further, Dr. A.M.Singhvi, Senior Advocate was appointed as Amicus Curiae to assist the Court. Finally, The Court issued a list of 11 guidelines in addition to the Constitutional and Statutory Safeguards which were to be followed in all cases of arrest and detention[1].

### **Bhim Singh vs. State of Jammu and Kashmir**

An MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs. 50,000- as compensation.

### **PUDR vs. Police Commissioner**

It is a case of laborers who were forced to work in police station without any wages. When the labourers demanded the wages they were beaten up and the women labourer's were stripped of their clothes and thrashed in the police station. In this atrocity one labourer by name Rama Swarup succumbed to the injuries. On these facts the Supreme Court ordered for payment of Rs. 50,000 - to the dependents of the deceased and the women whose clothes were stripped off was awarded Rs. 5,000- as compensation. Eight other labourers who were forced to work were paid Rs. 25 per day as wages.

### **Gauri Shankar Sharma v. State of UP.**

Two police-men were sentenced by the Supreme Court for severely beating a suspect for extracting a confessional statement. and his deliberate torture on non-payment of bribe resulting in custodial death. Expressing their deep concern on custody deaths the Court observed: "Deaths in police custody must be seriously viewed for otherwise we will help take a stride in the direction of police raj.

## **Arvinder Singh Bagga v. State of UP**

The Supreme Court ordered that compensation of Rs. 10,000 each to be paid to the lady and her husband be recovered from the concerned police officers and the SHO, SI and the 10 be prosecuted for illegal arrest causing humiliation and torture of the petitioners in police station for no fault of theirs.

The cases above that reflect the cruelty with which the human beings was brought in custody are treated by their fellow human beings. Custodial death is one of the worst crimes and the most distressing part is that these types of violence are being committed by the people who are there for the protection to prisoners. Recommendations made by many committees such as mulla committee, Justice V. R. Krishna Iyer Committee regarding changes in prisons etc..went into vain because , though recommendations were made they were not stringently implemented. Irrespective of the implementation of the recommendations made by several committees, custodial deaths were increased and in between 1 April 2017 to 28 February 2018 total 1,674 custodial deaths, including 1,530 deaths in judicial custody and 144 deaths in police custody, which is an evident for above one .We do accept that police works under so much of pressure and other disturbances, than work is also there, but the police certainly has no right to inflict brutality on a helpless person under its custody ignoring the 'canons of law'. In a democratic country like India, it's the people and not the police who are the real masters as the sovereign power is rested with them. The police are simply the agent of the government which is ultimately accountable to the people.If crime takes place in police custody, then we must lean towards some other machinery to curb it. Despite, we have many provisions in our Indian laws, custodial violence continues to exist. It is the duty of the prison administration to provide proper facilities of medical, sanitation, food, security to the prisoners and a monitory body to only review it but also keep an eye on the other activities inside the prison.After performing research regarding Custodial Violence in India, even researcher agreed with many people those believe that

there is no improvement in India inspite of myriad recommendations i.e. because of inefficiency of Government authorities.

[1] <https://timesofindia.indiatimes.com/blogs/lawtics/know-your-rights-part-1-rights-of-an-arrested-person/>

[1] BRUTALITY IN POLICE CUSTODY IN INDIA RESEARCH BY Roy Sudipto, Indiana State University ,Department of Criminology, Terre Haute, Indiana, USA

[1] Gill J, Koelmeyer TD. Death in Custody and Undiagnosed Central Neurocytoma. Am J Forensic Med Pathol 2009;30: 289–291

[2] Y S Bansal, Murali G, Dalbir Singh, Original research paper Custodial Deaths - An Overview of the Prevailing Healthcare Scenario Journal of Indian Academic Forensic and Medicine, Referred from <http://medind.nic.in/jal/t10/i4/jalt10i4p315.pdf>, retrieved on 22-5-2015

[3] Human rights and criminal procedure, available at [http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/Echr\\_and\\_crim\\_procedure.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/Echr_and_crim_procedure.pdf)



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