

CUSTODIAL VIOLENCE IN INDIA

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Abstract

The term “Custodial violence” is nothing but violence in police custody or in judicial custody. The term “custodial violence” has not defined under any law. Besides death, rape as well as torture are two other forms of custodial violence. Custodial violence is not a recent phenomenon. Unexpected and Sudden death in custody is commonly associated with allegations of torture against law enforcement agencies. Delay in providing basic medical care is one of the commonest allegations by the relatives against jail authorities. Considering the gravity of the situation, it may be argued that there is a strong need for better custodial management. Role of police is crucial in this regard. They should be trained in matters pertaining to human rights and prison management. There should be adequate number of medical personnel in prisons for prisoner’s welfare. New laws should evolve for the protection of prisoners and to get rid them from custodial violence; if not custodial violence is going to become never ending one. The author, in order to provide a comprehensive knowledge about this concept have also cited certain case laws for better understanding and tried to convey concept in a different way. There is a scope for conducting further research based on this topic. Thus, the author thinks that, this research might help for people those who want to conduct further research.

Keywords: Custody, Violence, Human Rights, Judicial custody

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Introduction

In the legal language, 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 arrests, prosecution, sentencing, and correctional confinement¹. Criminals or detainees taken into custody are subjected to torture by the police and also sometimes suffer death. These are known as custodial violence.

The Article 21 of 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, detainees, under trials and other prisoners in custody cannot be denied this precious basic rights² and the provisions in 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.

However, in the case of *T. Vatheeswaran v. State of Tamil Nadu*³, it was held that the Articles 14, 19 and 21 are available to 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 also or due to inadequate medical facilities and diagnosis, or negligence of jail authorities or due to physical abuse and torture.⁴ In most of the countries, the law prohibits using force or violence and also the international treaties signed by them [countries] prevent them from doing so, but even after those men, women and even children are facing the torture in almost all the countries of the world.

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. Hence, there is an immediate need in our country to address this issue to protect fellow human beings and their rights.

The purpose of this paper is to critically review custodial violence against the detainees or prisoners in police custody (i.e. police lock-ups at police stations) in India. Through 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.

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 1983 AIR 361

⁴ Human rights and criminal procedure, available at http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/documentation/Echr_and_crim_procedure.pdf

BRUTALITY IN POLICE CUSTODY - THE REALITIES⁵

These below mentioned were cases related to custodial violence

Physical Torture:

- Rajiv Rattan was confined at Kharar police station in Punjab for two weeks. While in custody, he was tortured and sustained grave injuries that resulted in the fracture of the neck of his femur bone, making him permanently disabled⁶.
- M. Sengupta was picked up by police on 4th December, 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 leg⁷.

Rape:

- On the night of 13th July, 1996, several police officials picked up 18-year-old Nisha Devi and detained her in police custody in Nangal Kahadar villege, Etawah district, in the state of Uttar Pradesh. Same night, while in custody, she was raped by more than one police officer to disclose the whereabouts of her brother-in-law to whom the police suspected of a

robbery that took place two days ago (Amnesty International, 1997c).

- On 5th May, 1995, Devika Rani, a 45 year old female resident of Ludhiana, in the state of Punjab, was taken from the Civil Hospital by police; she was visiting her husband who was undergoing treatment at the hospital. Her 18-year-old son, Rajesh Kumar earlier been arrested and was in police custody at the Atam Park police post. Mrs. Rani was taken to the same police station. In the custody, she was tortured and molested by an Assistant Sub-Inspector, the Head Constable, and two other men in the presence of her son; She was kept in the wrongful confinement for six days, and was finally released from the police post on May 11 at 9:00 pm⁸.

Custodial Death:

- On 19th June, 2000, 25-year-old L. Chakraborti died in police custody at the Bolpur police station in Birbhum district of the state of West Bengal. Consequently, a judicial investigation was ordered by the Calcutta High Court⁹.
- On 16th April, 2000, 26-year-old Sri Chand was taken into custody at Modi

⁵ BRUTALITY IN POLICE CUSTODY IN INDIA RESEARCH BY Roy Sudipto, Indiana State University, Department of Criminology, Terre Haute, Indiana, USA

⁶ Times of India, December 5, 1999

⁷ Times of India, December 11, 1999

⁸ Amnesty International, 1997

⁹ Anandabazar Patrika, June 19, 2000

Nagar police station in the state of Uttar Pradesh, concerning a robbery case. He was tortured to death by the UP Police; the police brought his body back to his home on April 26, 2000¹⁰.

FAILURE OF GOVERNMENTS

Though there were recommendations made by many committees appointed, there is no effective implementation of accepted recommendations made by them. There are even violation of prisoners' rights in the custody. Even though 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*¹¹ 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. The prisoners are protected by the rights guaranteed by the International Conventions and Constitution of India, enacted by the legislatures like The Prisons Act, 1894, The Prisoners Act, 1900.

In India, the Government of India Act 1935, resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. Above mentioned custodial violence instances were evident to state that, States were incompetent in implementation

of recommendations made by Central Government or Supreme Court for the welfare of prisoners i.e., against custodial violence, so there is a need for an act or law or national policy. "The Prevention of Torture Bill, 2010" was introduced in Lok Sabha for the benefit of prisoners i.e., to protect them from custodial violence and to ratify the UN Convention against Torture of 1975, but bill got lapsed because of dissolution of the 15th Lok Sabha on 18th May, 2014. In November, 2017, the Law Commission in its 273rd report has recommended that Government should ratify the convention. The report also presented a draft of new Prevention of Torture Bill to the government. Such an enabling legislation would be needed to ratify the convention. However, bill is pending since 2 years. It recommends a prison term for a minimum of three years and a maximum of ten and a fine.

SUGGESTIONS TO CURB CUSTODIAL VIOLENCE

Suggestions to curb custodial violence are as follows:

- 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.

¹⁰ The Hindusthan Times, April 27, 2000

¹¹ AIR 1983 SC 361: (1983) 2 SCC 68.

- New laws should be made by legislatures for prisoners.
- Open prisons should be increased.
- 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.
- Effective implementation of accepted recommendations from the committees appointed.

CASE LAWS

- **D.K. Basu v. State of West Bengal**¹²

D.K Basu, The Executive Chairman, Legal Aid Services in 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 published in the Telegraph Newspaper regarding deaths in police lock up and custody. He requested that the letter to be considered as a Writ Petition within the “Public Interest Litigation” Category. Considering the importance of the issues in this letter, it was considered as a Writ Petition by the court and notice was served to the Respondents.

While the Writ Petition was under consideration, 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. Same letter was also treated as a Writ Petition and was listed along with the Writ Petition of D.K Basu. On 14th August in 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. Abhishek Manu Singhvi, a Senior Advocate was appointed as Amicus Curiae to assist the Court. Finally, The Court issued a list of eleven guidelines in addition to the Constitutional and Statutory Safeguards which should be followed in all cases of arrest and detention .

- **Bhim Singh v. State of Jammu and Kashmir**

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

¹² (1997) 1 SCC 416

- **PUDR [People's Union for Democratic Rights] v. Police Commissioner**

It's a case of laborers who were forced to work in police station without any wages. When 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 of the labourers by name Rama Swarup succumbed to the injuries. On these facts the Supreme Court ordered for the payment of Rs. 50,000 to the dependents of the deceased and the women whose clothes were stripped off was awarded compensation of Rs. 5,000. 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 officers were sentenced by the Supreme Court of India for severely beating a suspect for extracting a confessional statement. and his deliberate torture on non-payment of bribe which resulted 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 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.

CONCLUSION

The cases discussed above reflect the cruelty with which the human beings was brought in custody are treated by their fellow human beings i.e. by police. Custodial death is one of the worst crimes in India 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 i.e., by police. 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 recommendations made by several committees, custodial deaths were increased and in between 1 April 2017 to 28 February 2018 i.e., in total 1,674 custodial deaths including 1,530 deaths in the 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 country like India, which is democratic, it's

the people and not the police who are the real masters as the sovereign power is rested with them. Police are simply agents of the government, which is ultimately accountable to the people. If crime or custodial violence takes place in police custody, then we must lean towards some other machinery to curb it such as CCTVS. Despite, we have many provisions in our Indian laws, custodial violence continues to exist. It is a duty of the

prison administration to provide and ensure whether proper facilities of medical, sanitation, food, security to the prisoners are there or not. After performing research regarding Custodial Violence in India, even researcher agreed with many people those believe that there is no improvement in India in spite of colossal recommendations i.e., because of inefficiency of Government authorities.