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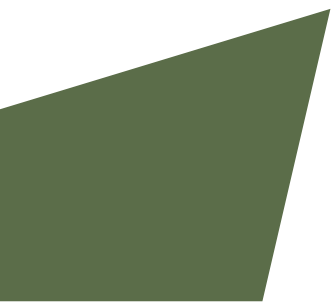
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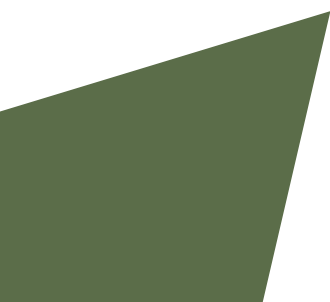
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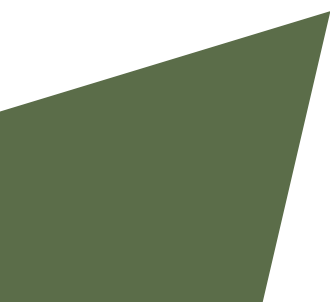
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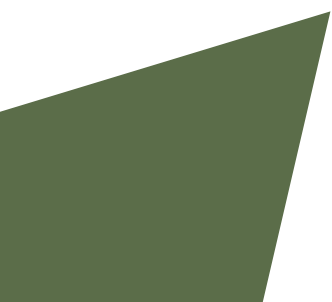
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Custodial Death- When our Savior Becomes a Slayer!

Vipul Pathak & Khushbu Sangwan

ABSTRACT

The Constitution of India guarantees various rights to a 'prisoner' or 'person in custody', under *Article 20, 21 and 22 of the Constitution*. The Hon'ble Supreme Court of India has interpreted certain rights such as '*Right against Inhuman Treatment by the police*', '*Right against handcuffing*', '*Right to a fair and speedy trial*', '*Right to free legal aid*', etc. to be an integral part of *Article 21* of the Constitution. But, when a suspect dies in the police custody, it conveys disgrace to our Constitution (i.e. the best Constitution of the world). Such incident raises serious questions about the 'violations of rights of the victims', 'responsibility of State to curb such offence' and 'the need for enactment of suitable legislation'. This study explains the proliferating "social evil-custodial death", with analysis of the data and latest unfortunate instances, across India and the world. The ultimate aim of the study is to explain those promising ways by which the custodial deaths can be stamped out from society.

Keywords: Constitution of India; Human Rights; Custodial death; Police officer, Legislations.

INTRODUCTION

Imagine, what will happen when our savior (i.e. police officers) will abuse the power and law? How adversely will our society suffer; when those who are assigned with the responsibility to implement the law, *per se* violate the law?

Well, such a situation doesn't seem to be in our interests and it poses a huge threat to our democratic and constitutional values. But it becomes pivotal to be pessimistic here, as this threat has been arising from a proliferating social evil -'custodial death'. The fact that there were on an average 5 custodial deaths per day in India during 1st April 2017 and 28th February 2018¹, *per se*, shows the gravity of this issue. Even the fact that a large number of victims of custodial death are from poor and marginalized sections of society, makes this situation graver.² Thus, the custodial deaths are an alarming issue for a country like India which has the best Constitution in the world; securing equal rights, liberty and dignity to all the citizens.

The Hon'ble Supreme Court of India ("Hereinafter referred to as SC") held "*third-degree method by the police to be violative of Article 21 of the Constitution.*" The Hon'ble Court has also directed the government to educate the police to inculcate respect for the human person.³ It is very unfortunate that even after 39 years of this principle judgment, the number of deaths did not reduce, instead, it paced up.

This problem is not pertaining to our nation only. "All lives matter" is bursting all over the world; this was embarked when a black man George Floyd⁴ was subjected to custodial death in America. He was killed with brutality by suffocating on the street by three police officers. This slogan is associated here with racism, whereas in the broader view when it comes to "*all lives*" it should be linked with the life of each person, irrespective of his caste, creed, gender, social or financial status, or his position as a 'person in custody' or 'prisoner'.

There has been new legislation introduced over time; still, we are far behind reaching the goal of justice. It is to be analyzed that excess of authority may be the reason for the disaster, and we are at the 11th hour of the disaster. Thus, sensitization among people is required to eliminate such evil practices from society. It is pivotal that the people must raise their voice collectively in order to eliminate such a grave problem, by expressing 'that no kind of atrocities would be tolerated in this modern era against anyone'.

¹ Vignesh Radhakrishnan, et al. *Five custodial deaths in India daily says the report*, The Hindu, 27 June 2020, <https://www.thehindu.com/news/national/five-custodial-deaths-in-india-daily-says-report/article31928611.ece>

² *Ibid.*

³ *Kishore Singh v. State of Rajasthan*, 1981 SCR (1) 995.

⁴ Wikipedia, https://en.wikipedia.org/wiki/George_Floyd

In this research paper, we have tried to scrutinize the trend of custodial deaths while gazing upon the alarming data regarding custodial deaths and the latest unfortunate instances. We will also answer certain important questions, such as; what are the rights of a person in custody? What are the legislations in India pertaining to custodial death? What are the different methods of torture used by the police? How to protect the victims from such atrocities by the police?

WHAT IS 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. It is perhaps one of the worst crimes in a civilized society governed by the rule of law.⁵

*The Hon'ble SC has held that the prisoners are entitled to fundamental rights while they are in custody.*⁶ If we look at the custody in the context of an arrest, it does not imply the usage of any kind of violence just because the one in custody is an accused. Thus, this should be duly acknowledged that the person in custody or a prisoner can't be deprived of the basic human rights, except those which are curbed by the court.

What is the Difference between Police Custody and Judicial Custody?

Police Custody: When following the receipt of an information/complaint/report by police about a crime, a police officer arrests the suspect involved in the crime reported, to prevent him from committing the offensive acts further and brings that suspect to the police station, this detention in the police station is known as police custody.⁷ In police custody, a suspect is kept in the lockup.

Judicial custody: When a suspect is kept in jail by the order of the concerned magistrate, he is said to be under judicial custody. In simple words, the suspect is in the custody of the magistrate.⁸ When a suspect is presented before the magistrate, he can either be sent to jail or detained under police custody, by the magistrate.⁹

⁵ *D. K. Basu v. State of W.B.*, (1993) 2 SCC 746.

⁶ *Sunil Batra (No. 2) v. Delhi Administration*, AIR 1980 SC 1579.

⁷ <https://districts.ecourts.gov.in/sites/default/files/fct.pdf>

⁸ *Ibid.*

⁹ Tripaksha, *Difference between Police Custody and Judicial Custody*, Tripaksha Litigation, April 17 2020,

[https://tripakshalitigation.com/difference-between-police-custody-and-judicial-custody/#:~:text=DEFINITION%20\(POLICE%20CUSTODY\),officer%20will%20arrest%20that%20person.](https://tripakshalitigation.com/difference-between-police-custody-and-judicial-custody/#:~:text=DEFINITION%20(POLICE%20CUSTODY),officer%20will%20arrest%20that%20person.)

What is the Difference Between a Prisoner and a Person In Custody?

Prisoner: A prisoner is a person who is convicted of an offence by the court of law. The conviction is for a particular term, which he has to serve in prison.

A person in custody: A person in custody is the suspect of a crime, who has been arrested and is being kept in lockup, until he can be tried in a court of law.¹⁰

The distinction is drawn here to understand the magnitude that if one is subjected to death in the custody due to vilest torture; even before the verdict of the court of law, then it will amount to be a gross injustice and violation of human rights. Travis Easter quoted- *“If officers and citizens are being watched, we both are more liable to do the right thing”*¹¹. Undeniably, police play an important role for our safety, but it is pivotal to duly acknowledge that they are also beneath the law and if the law is violated by them, then they too can be held liable.

What is the Distinction between an Encounter and the Custodial Death?

“Every encounter is per se a custodial death, while vice-versa is not true.” In order to distinguish between custodial death and encounter, it is important to ascertain that in custodial death the suspect is killed because of torture or cruel, inhuman or degrading treatment by the police officers during the custody, whereas in an encounter the police officer kills the suspect and takes the plea of self-defense. Thus, both are the extra-judicial killings by the police officers, with a slight variation, due to the plea of self-defense by police officers in encounters, while such a plea is not found in the cases of custodial death.

Paulo Coelho quoted that *“Important encounters are planned by the souls long before the bodies see each other”*. Just imagine! How dreadful will be the situation for human rights in such a scenario where a suspect is directly encountered by the police officers, in a country like India, governed by the rule of law. The police officers can easily escape the conviction by resorting to the plea of self-defense, but what about the human rights of the deceased? To be more pessimistic here, what will be the remedy when the innocents or falsely implicated people will be killed in such a brutal manner?

¹⁰<https://www.collinsdictionary.com/dictionary/english/incustody#:~:text=Someone%20who%20is%20in%20custody,be%20tried%20in%20a%20court.>

¹¹https://amac.us/wp-content/uploads/2016/07/160718_police-cameras-quote-easter.png

AN ALARMING DATA

The data pertaining to custodial deaths in India is alarming, as enumerated hereunder;

- There were on average 5 custodial deaths per day in India during 1st April 2017 and 28th February 2018.¹²
- As per the report of the National Crime Records Bureau (NCRB), the number of deaths in police custody between 2001 and 2018 was 1,727. But, only 810 cases were reported, 334 were charge-sheeted out of which just 26 policemen were convicted.¹³
- It is specifically mentioned in the report of NCRB that in 2017, 58 custodial deaths were of those who were not even presented before the court of law.¹⁴
- Report by Asian Centre for Human Rights (ACHR) stated the data of deaths in judicial as well as police custody. There were 1530 deaths in the former and 144 deaths in the latter, from 1st April 2017 to 28th February 2018.¹⁵
- National Campaign against Torture released a report stating the data of custodial deaths in 2019, which affirmed that out of 125 deaths, 93 deaths (3 out of 4) were due to the torture or foul play by the police.¹⁶

Thus, this data is *per se* sufficient to highlight the gravity of the issue of custodial deaths in India. The position of foreign countries w.r.t. the custodial death is also appalling. The data specified below highlights the same;

- U.S.A:
The Bureau of Justice Statistics estimates that 17, 358 individuals in custody died during the period from 2007-2010.¹⁷
- Russia:
According to Russian Ebola (an investigative website), 200 people died in police custody in 2015.¹⁸

¹² Vignesh Radhakrishnan, et al. *Five custodial deaths in India daily says the report*, The Hindu, 27 June 2020, <https://www.thehindu.com/news/national/five-custodial-deaths-in-india-daily-says-report/article31928611.ece>

¹³ <https://ncrb.gov.in/hi/crime-in-india-table-additional-table-and-chapter-contents?page=18>

¹⁴ *Ibid.*

¹⁵ Arijit Senugupta, “High number of custodial deaths: Police butchering human rights”, News Click, 28 June 2018, <https://www.newsclick.in/high-numbers-custodial-deaths-police-butchering-basic-human-rights>

¹⁶ Vijdan Moh. Kawoosa, *Police not trained enough in Human rights, reveals surveys*, Hindustan Times, 30 June 2020, <https://www.hindustantimes.com/india-news/police-not-trained-enough-in-human-rights-reveal-surveys/story-Cbr9cc4oOYICZGR48aaQWO.html>

¹⁷ Wikipedia, https://en.wikipedia.org/wiki/Death_in_custody#Estimates

¹⁸ Tatyana Lokot, *200 people died in Russian police custody in 2015*, The Guardian, 13 Jan 2016, <https://www.theguardian.com/world/2016/jan/13/200-people-died-in-russian-police-custody-in-2015-says-website>

- England and Wales:

According to the Independent Office for Police Conduct (IOPC), there were 23 custodial deaths in England and Wales in the year 2017.¹⁹

Thus, it is evident from the above data that custodial death is not just a crime, but also a threat to society and mankind, with its intensifying horrifying episodes.

Latest unfortunate instances of custodial deaths:

- **India:**

- ✓ *“The misery of a father and son in Thoothukudi (Tamil Nadu).”*

- The custodial death of a father and son in Tamil Nadu is the recent instance of brutality by the police officers. The alleged lockdown violation charge on them was something which would have rendered them imprisonment of maximum three months; if they were found guilty.²⁰ Such an instance is sufficient to raise the question that ‘who authorized the police officers to resort to violence on the suspects, which are not yet proven guilty by the court?’

- ✓ *“Four UN special rapporteurs have asked the Indian government to investigate the alleged torture and custodial killings of several Muslim men since January 2019”²¹. Amid rapporteurs sent a report²² of several Muslims of Kashmir who was slewed in 2019 during January and July, to the Government of India for probing their custodial deaths.*

- ✓ *“Seventeen years since Khwaja Yunus died in Mumbai police custody, Indian cops are still unaccountable for custodial deaths”²³. Thus, rising cases of custodial deaths where the police officers are not blamed for the homicide is slaughtering justice.*

- **U.S.A:**

¹⁹ Vikram Dodd, *Police custody deaths in England and Wales highest for a decade*, The Guardian, 25 July 2018, <https://www.theguardian.com/uk-news/2018/jul/25/highest-number-of-people-in-a-decade-die-in-police-custody>

²⁰ Arun Janardhanan, *How Tamil Nadu Police's brutal act of revenge claimed the lives of a father and son*, The Indian Express, 4 July 2020, <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/>

²¹ Anadolu agency, *UN officials seek probe into torture, custodial deaths of Muslims in occupied Kashmir*, DAWN, 9 July 2020, <https://www.dawn.com/news/1567979/un-officials-seek-probe-into-torture-custodial-deaths-of-muslims-in-occupied-kashmir>

²² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25208>

²³ Parth MN, *Seventeen years since Khwaja Yunus died in Mumbai police custody, Indian cops still unaccountable for custodial deaths*, Firstpost, July 7 2020, <https://www.firstpost.com/india/seventeen-years-since-khwaja-yunus-died-in-mumbai-police-custody-indian-cops-still-unaccountable-for-custodial-deaths-8566861.html#:~:text=In%20the%20last%20week%20of%20the%20Mumbai%20Police%20had%20arrested.>

- ✓ “George Floyd: Officer told dying man to stop yelling”²⁴. George Floyd’s custodial death is a mystery to none. He was viciously killed by police officers while he cried for help.
 - ✓ “Black people dying in police custody should surprise no one.”²⁵ In America, black Americans comprise 3 percent of the population, yet 8 percent is found in the custodial deaths.
- **Russia:**
 - ✓ *Timur Khinchagov*: died in October 2019, while he was in police custody in Russia’s northwestern Leningrad region.²⁶

These headlines are crying out loud to emphasize the need to acknowledge that the police oppress all around the world.

VARIOUS METHODS OF TORTURE USED BY THE POLICE

Torture is defined as intense sufferings, physical, mental, and psychological, the main aim of which is to force someone to make him give some information. It also includes breaking down due to severe physical pain and extreme psychological pressure.²⁷ It gives immense pain and suffering to the victims. It deprives victims of the enjoyment of life and compels them to commit suicide or even the torture in itself can be fatal.

The various methods of torture applied by the police officers are mentioned below:

1. Rape:

Rape is a prevalent form of custodial torture, not just with women but men too. The well-known case of *Tukaram and another v. State of Maharashtra*,²⁸ popular as *Mathura Rape case* is an ‘ill-fated’ revelation to such custodial torture.

2. Harassment and beatings:

²⁴ BBC News, July 9 2020, <https://www.bbc.com/news/world-us-canada-53343967>

²⁵ Nazir Afzal, *Black people dying in police custody should surprise no one*, The Guardian, 11 June 2020, <https://www.theguardian.com/uk-news/2020/jun/11/black-deaths-in-police-custody-the-tip-of-an-iceberg-of-racist-treatment>

²⁶ RFE/RL’s North Caucasus Service, *North Caucasus Man Dies While in Police Custody in Russia*, Radio Free Europe Radio Liberty, 13 November 2019, <https://www.rferl.org/a/north-caucasus-man-dies-while-in-police-custody-in-Russia/30269552.html>

²⁷ R. S. Saini, *Custodial Torture in law and practice with reference to India*, Indian Law Institute, Vol. 36, No. 2, 1994.

²⁸ (1979) SCR (1) 810.

In the case of, *Nilabati Behera v. State of Orissa*²⁹, the victim died due to the harassment and beatings by the police. Such acts are prevalent among the police and it leads to many miseries for the victims.

3. Illegal detention:

In the case of, *Rudal Shab v. State of Bihar*³⁰, the accused was detained in jail for 14 years, after his acquittal by the Sessions Court. Thus, such illegal detention leads to immense pain and torture.

4. Other methods of Inhuman treatment:

According to NCAT³¹ director Paritosh Chakma, the different torture methods used in 2019 were hitting in the private part, urinating in mouth, forced oral sex, electric shocks, beating while being hand-cuffed, beating after stripping, hammering iron nails in the body, etc.³²

These ways of torture not only depict inhumane behavior but also displays the futile existence of human rights. There is a need to strike a balance between individual human rights and societal interest in combating crime using a realistic approach³³.

In *Kishore Singh v. State of Rajasthan*³⁴, the Hon'ble SC observed that *"Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running berserk regardless of human rights."*

WHAT ARE THE RIGHTS OF A PERSON IN POLICE CUSTODY?

"A right delayed is a right denied"-Martin Luther King, Jr. By quoting Luther king the usher importance of the recognition of a right is implied, there are rights of a person in custody or even in prison; those rights are highlighted in this research paper.

*The Hon'ble SC has held that the precious rights guaranteed under Article 21 of the Constitution could not be denied to convicts, under-trials, detainees and other prisoners in custody, except according to the procedure established by law.*³⁵

²⁹ (1993) SCR (2) 581.

³⁰ (1983) 4 SCC 141.

³¹ National Campaign Against Torture

³² Debananda Medak, *India records daily five deaths in custody*, T8 Digital Desk, 30 June 2020, <https://www.time8.in/india-records-daily-five-deaths-in-custody/>

³³ *Joginder Kumar v. State of U.P.*, 1994 4 SCC 260.

³⁴ AIR 1981 SC 625.

*The Hon'ble SC has also laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention.*³⁵ These guidelines are popularly known as “**D.K Basu guidelines**” and are enumerated hereunder;

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible, and clear identification and name-tags with their designation.
2. The police officer carrying out the arrest of a person must prepare a memo of arrest and it must be attested by at least one witness.
3. A friend or relative or another person, known to the arrestee or has an interest in his/her welfare shall be informed as early as possible about the arrest.
4. If the next friend or relative of the arrestee lives outside the district or town, they must be informed by the police through ‘legal aid organization’ telegraphically, within 8 to 12 hours during the arrest.
5. The arrestee must be instructed about the right to have someone informed about his/her arrest or detention, as soon as he/she is put under arrest or is detained.
6. An entry must be made in the diary regarding the arrest of the person.
7. On the request of the arrestee, he/she should be examined at the time of the arrest.
8. The arrestee should be subjected to medical examination within 48 hours during his detention.
9. All documents including the memo of arrest should be sent to the concerned magistrate.
10. The arrestee may be permitted to meet his lawyer during interrogation.
11. A police officer causing the arrest shall provide ‘information regarding the arrest’ and ‘place of custody’ of arrestee within 12 hours of affecting the arrest to the police control room.

The Rights of a ‘Person In Custody’ or ‘Prisoner’, under Article 21 of the Constitution³⁷, are mentioned below:

- Right to bail:

The detention of under-trial prisoners in jail custody to an indefinite period violates Article 21 of the Constitution.³⁸

³⁵ *D.K. Basu v. State of W.B.*, AIR 1997 SC 610.

³⁶ *Ibid.*

³⁷ Article 21, The Constitution of India, 1950

Protection of life and personal liberty:- No person shall be deprived of his life or personal liberty except according to the procedure established by law.

- Right to free legal aid:

Providing this right is the State's duty and not the Government's charity.³⁹ Right to free legal aid is a guaranteed fundamental right under Article 21 read with Article 39-A⁴⁰ of the Constitution.⁴¹

The criterion for giving legal service is laid in Section 12 of the Legal Services Authorities Act, 1987 which specifies that every person shall be entitled to legal services under this Act if that person is;

- ✓ A member of a scheduled caste or scheduled tribe, a victim of trafficking in human beings or beggar, a woman or a child, a person with a disability, a person under circumstances of undeserved want, an industrial workman, a person in custody or a juvenile home or a psychiatric (hospital or nursing home), or a person in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government.

- Right against solitary confinement:

The solitary confinement hampers the liberty to move, mix, mingle, talk, and share company with co-prisoners. If this liberty is substantially curtailed, it would amount to a violation of Article 21 of the Constitution, unless curtailment has the backing of the law.⁴²

- Right against handcuffing:

The Hon'ble SC has held that the handcuffing is *prima facie* inhuman and therefore, unreasonable, and at the first flush, arbitrary. Thus, it should be resorted to only when there is a clear and present danger of escape breaking out the police control and for this, there must be clear material, not merely an assumption.⁴³

- Right against the inhuman treatment by the police:

³⁸ *Sanjay Chandra v. C.B.I*, AIR 2012 SC 830.

³⁹ *M.H. Hoskot v. State of Maharashtra*, AIR 1978 SC 1548.

⁴⁰ Article 39-A, The Constitution of India, 1950

Equal justice and free legal aid:- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen because of economic or other disabilities.

⁴¹ *State of Maharashtra v. Manubhai Pragaji Vashi*, (1995) 5 SCC 730.

⁴² *Sunil Batra (No. 1) v. Delhi Administration*, AIR 1978 SC 1675.

⁴³ *Prem Shankar v. Delhi Administration*, AIR 1980 SC 1535.

Human dignity is a clear value of our Constitution not to be bartered away for mere apprehension entertained by jail officials.⁴⁴ Thus, the Hon'ble SC declared the 'third-degree method' used by the police to be violative of Article 21 of the Constitution.⁴⁵

- Right to a speedy trial:

'Right to a speedy trial' is a fundamental right and is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution.⁴⁶ This right is available to accused at all stages of *investigation, inquiry, trial, appeal, revision, and retrial*.⁴⁷

- Right to a fair trial:

Fair trial is the heart of criminal jurisprudence and, in a way, an important facet of democratic policy that is governed by the Rule of law. Denial of a fair trial is the crucifixion of human rights. It is ingrained in the concept of due process of law.⁴⁸ The fair trial includes a fair investigation.⁴⁹

- Right of detenu to 'socialize' and 'to have an interview with the lawyer':

The word 'personal liberty' in Article 21 is of the widest amplitude and it includes the 'right to socialize' with the members of family and friends, subject of course, to any valid prison regulations which must be reasonable and non-arbitrary. It also includes the right to have an interview with the lawyer.⁵⁰

Rights specified under Article 20 of the Constitution, are enumerated hereunder;

- Right to protection against 'ex post facto law':

No person shall be convicted of any offence except for violation of a 'law in force' at the time of the commission of the act charged as an offence.⁵¹ This means that if an act is not an offence at the date of its commission, it cannot be an offence at the date subsequent to its commission.⁵²

⁴⁴ *Kishore Singh v. State of Rajasthan*, AIR 1981 SC 625.

⁴⁵ *Ibid*.

⁴⁶ *Hussainara Khatoon (No. 1) v. Home Secretary, State of Bihar*, AIR 1979 SC 1360; *Kadra Pabadiya v. State of Bihar*, AIR 1982 SC 1167.

⁴⁷ *Abdul Rehman Antuley v. R.S. Nayak*, AIR 1992 SC 1630.

⁴⁸ *Rattiram v. State of M.P. through Inspector of Police*, AIR 2012 SC 1485.

⁴⁹ *Nirmal Singh Kablon v. State of Punjab*, AIR 2009 SC 984.

⁵⁰ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746.

⁵¹ Article 20(1), The Constitution of India, 1950.

⁵² *Chief Inspector of Mines v. K.C. Thapper*, AIR 1961 SC 883.

Also, no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.⁵³

- Right to protection against ‘Double jeopardy’:

No person shall be prosecuted and punished for the same offence more than once.⁵⁴ Thus, if a person is prosecuted again for the same offence for which he has already been prosecuted, he can take the complete defense of his former acquittal or conviction.⁵⁵

- Right to the prohibition against ‘self-incrimination’:

No person accused of any offence shall be compelled to be a witness against himself.⁵⁶

Rights specified under Article 22 of the Constitution, are enumerated hereunder;

- Clause (1) and (2) of Article 22 guarantee four rights on a person who is arrested for any offence under an ordinary law;⁵⁷
 - ✓ The right to be informed ‘as soon as may be’ of the ground of arrest.
 - ✓ The right to consult and to be represented by a lawyer of his/her own choice.
 - ✓ The right to be produced before a magistrate within 24 hours.
 - ✓ The freedom from detention beyond the said period except by the order of the Magistrate.
- Clause (4) to (7) of Article 22 provides the procedure which is to be followed if a person is arrested under the law of preventive detention;⁵⁸
 - ✓ Any law providing for preventive detention shall not authorize the detention of a person for a longer period than 3 months⁵⁹ except for certain conditions enumerated under Article 22(4) of the Constitution.
 - ✓ Article 22(5) provides the right of communication of the grounds of detention to the detenu. It also provides to detenu the earliest opportunity of making a representation against the order of detention.

⁵³ Article 20(1), The Constitution of India, 1950.

⁵⁴ Article 20(2), The Constitution of India, 1950.

⁵⁵ Dr J. N. Pandey, *Constitutional Law of India*, (55th ed., 2018), pg. 257.

⁵⁶ Article 20(3), The Constitution of India, 1950.

⁵⁷ Dr J. N. Pandey, *Constitutional Law of India*, (55th ed., 2018), pg. 353-354.

⁵⁸ *Ibid.*

⁵⁹ Article 22(4), The Constitution of India, 1950.

INDIA'S OBLIGATION TOWARDS INTERNATIONAL REGULATIONS:

Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into with these provisions to enlarge the meaning and content thereof and to promote the object of the constitutional guarantee.⁶⁰

This is implicit from the fact that the Government under Article 51(c)⁶¹ of the Constitution has a duty to honor the internationally recognized rules and principles and the Parliament has the enabling power to enact laws for implementing the international conventions and norms by virtue of Article 253⁶² read with Entry 14 of the Union List in Seventh Schedule of the Constitution.⁶³ Thus, India has an obligation to fulfill or duly comply with certain International regulations, such as International Covenant on Civil and Political Rights, 1966 (**ICCPR**), and Universal Declaration of Human Rights, 1948 (**UDHR**).

Article 7 of the **ICCPR**, specifies that “*no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment*”.⁶⁴ This provision is also specified under Article 5 of **UDHR**.

UDHR also provides that;

- ✓ No one shall be subjected to arbitrary arrest, detention, or exile.⁶⁵
- ✓ Everyone is entitled to a fair and public hearing by an independent and impartial tribunal.⁶⁶
- ✓ No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.⁶⁷

⁶⁰ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁶¹ Article 51(c), The Constitution of India, 1950

Protection of international peace and security;- The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and encourage settlement of international disputes by arbitration.

⁶² Article 253, The Constitution of India, 1950

Legislation for giving effect to international agreements;- Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

⁶³ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁶⁴ Article 7, International Covenant on Civil and Political Rights, 1966.

⁶⁵ Article 9, Universal Declaration of Human Rights, 1948.

⁶⁶ Article 10, Universal Declaration of Human Rights, 1948.

⁶⁷ Article 11, Universal Declaration of Human Rights, 1948.

ICCPR and **UDHR** specify that no one should be subjected to torture or inhuman treatment or arbitrary punishment. Thus, these provisions are consistent with the fundamental rights and in harmony with its spirit; thus, it should duly be complied with.

LEGISLATIONS PERTAINING TO THE OFFENCE OF CUSTODIAL DEATH IN INDIA:

The laws which deal with the offence of custodial death are as follows:

1. The Indian Penal Code, 1860: (“hereinafter referred to as IPC”)

- A police officer committing the murder of a suspect in custody shall be punished under section 302 of IPC for the offence of ‘murder.’
- A police officer can be punished for custodial death under section 304 of IPC for ‘culpable homicide not amounting to murder.’
- The provisions of section 304A of IPC i.e. ‘causing death by negligence’ can also be attracted, if the case falls within its ambit.
- If the victim has committed suicide and it is proved that the police officer has abetted the commission of such suicide, then the police officer will be liable for punishment under section 306 of IPC.

Punishment for custodial violence under IPC:

- When a police officer voluntarily causes ‘hurt’ or ‘grievous hurt’ to extort confession, then such a police officer shall be punished under;
 - ✓ Section 330 of IPC for voluntary causing hurt.
 - ✓ Section 331 of IPC for voluntary causing grievous hurt.
- A police officer can also be punished under Section 342 of IPC for ‘wrongful confinement’.

2. The Code of Criminal Procedure, 1973: (“hereinafter referred as CrPC, 1973”)

- Under section 176(1) of CrPC “a magistrate, who is empowered to hold inquests with respect to an unnatural death, may hold an inquiry into the cause of death in addition to the investigation held by a police officer.”

- Under section 176(1A) of CrPC⁶⁸ “When a person dies, disappears or rape is committed on any woman, while such person or women is in the police custody or any other custody authorized by the Magistrate or the Court.” An inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed, in addition to the inquiry or investigation held by the police.
- The magistrate holding an inquiry or investigation under section 176(1A) of CrPC, shall ‘within 24 hours of the death of a person, forward the body for examination to the nearest civil surgeon’.⁶⁹

3. Guidelines by the National Human Rights Commission for ‘Magisterial Enquiry’:

The following guidelines should be followed while conducting the magisterial inquiry in case of custodial death or death in the course of police action;⁷⁰

- The magisterial inquiry should be conducted at earliest without undue delay.
- The inquiry magistrate should visit the place of occurrence, to the acquaintance with the facts on the ground.
- The inquiry magistrate should ensure that the information reaches all concerned with it, especially the close relatives of the victim.
- The magisterial inquiry should cover aspects, such as; the circumstances of death, the cause of death, the manner and sequence of incidents leading to death, etc.
- The inquiry magistrate should examine and verify records, such as; inquest report, post mortem report, the final cause of death, medical treatment records, etc.
- The magistrate should examine the family members and other relatives of the deceased, eye-witnesses, prison officials, co-prisoners, etc.

4. The Indian Evidence Act, 1872:

The Indian Evidence Act embodies certain provisions with regard to police custody.

- The confession caused by inducement, threat, or promise is considered to be irrelevant in criminal proceedings.⁷¹

⁶⁸ Section 176(1A), The Code of Criminal Procedure, 1973 (Inserted vide ‘The Code of Criminal Procedure (Amendment) Act, 2005.’

⁶⁹ Section 176(5), The Code of Criminal Procedure, 1973.

⁷⁰ https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf

⁷¹ Section 24, The Indian Evidence Act, 1872.

- A confession made to a police officer, shall not be proved against an accused.⁷²
- Confession by accused while in the custody of the police, not to be proved against him.⁷³

COMPENSATION FOR THE VICTIMS

The Hon'ble SC has held that the Court has the power to award monetary compensation in appropriate cases where there has been a violation of the constitutional rights of citizens.⁷⁴ Thus, the Court can order payment of compensation to the victims of State violence⁷⁵ or to the family members of the victim, where the victim has died due to such violence.

In the case of, *Sabali v. Commr. Of Police*⁷⁶

“The Hon'ble SC directed the Delhi Administration to pay Rs. 75,000/- as exemplary compensation to the mother of a 9 years old child who died due to beating by the police officer.”

In, *People's Union for Democratic Rights v. Police Commissioner, Delhi Headquarter*⁷⁷

“A laborer was taken to the police station for doing some work. He was severely beaten when he demanded wages, which lead to his death. The Hon'ble SC held that the State is liable to pay compensation and accordingly directed the government to pay Rs. 75, 000/- as compensation to the family of the deceased.”

The compensation can help the victims or their families to continue with their life. It serves as an apology by the State to the victims of atrocities by the police officers. The development in the Indian legal system by rejecting the doctrine of sovereign immunity⁷⁸ was the first step by our Hon'ble SC in imposing limits on the powers of the State. *The defense taken by the State to defend its action or the tortious action of its officers by raising the plea of immunity for sovereign was rejected by the Hon'ble SC.⁷⁹* Thus, the powers of the State were limited; more responsibility was entrusted upon the State to fulfill its constitutional duties. It was made liable for the wrong done by its officers.

This development in the Indian legal system unbarred the way for the provision of compensation for the victims. It's pivotal to modify the legal system from time to time. The situation now is becoming worse with an expansion in the police atrocities everywhere. Thus,

⁷² Section 25, The Indian Evidence Act, 1872.

⁷³ Section 26, The Indian Evidence Act, 1872.

⁷⁴ *Rudal Shab v. State of Bihar*, (1983) 4 SCC 141.

⁷⁵ Dr J. N. Pandey, *Constitutional Law of India*, (55th ed., 2018), pg. 336.

⁷⁶ AIR 1990 SC 513.

⁷⁷ (1989) 4 SCC 730.

⁷⁸ *Common Cause, A Registered Society v. Union of India*, (1999) 6 SCC 667.

⁷⁹ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

enacting proper legislation to impose curb on custodial deaths and providing strict penalties for the offenders is the need of the hour to meet the ends of justice.

CONCLUSION AND SUGGESTIONS

The custodial deaths are prevalent in India. It is one of the worst crimes for our society because it is not done by a malefactor; rather it is done by our savior on whom we trust and rely on our safety. It is hard to believe that the person, who has taken the responsibility of our protection and welfare, has betrayed us; the person whom we trust for help and protection has resorted to torture on the suspects/detenus, which are not yet proven guilty.

The fact that the different torture methods used by the police include rape, hitting in the private part, urinating in mouth, forced oral sex, etc.⁸⁰ is more disheartening and *per se* expressing the gravity of this issue. It raises a very important question that “*why police officers lack respect for the human person?*”

Such betrayal by the police officers highlights the lacunas of the Indian legal regime. Also, the fact that there were just 26 convictions of policemen out of 1,727 cases of custodial deaths from 2001 to 2017⁸¹, shows that justice has not been done and there are many shortcomings in the legal system. Thus, it is important to emphasize the dire need of an anti-torture law in India.

Just Imagine! How beautiful will be the society, when no violence will be there. Imagine that organized society, where there would be due compliance of ‘rule of law’ and where the ‘proper justice mechanism’ would be there for everyone. In such a scenario everyone will get justice; rich people won’t be able to suppress poor and downtrodden sections of society, the authorities possessing power will not misuse their power, no one will be victimized and everyone will be able to enjoy the ‘Right to life’ in true sense.

Yes! Such a scenario looks fascinating. But, it’s not a cakewalk to eradicate the custodial deaths from society. It can only be eradicated with due commitment and perseverance, as without them such a mammoth task can’t be achieved.

SUGGESTIONS

In order to eradicate the ‘custodial death’- a social evil from society, it is pivotal that people must raise their voice collectively against such atrocities. We the people, media, legislature, and

⁸⁰ Debananda Medak, *India records daily five deaths in custody*, T8 Digital Desk, 30 June 2020, <https://www.time8.in/india-records-daily-five-deaths-in-custody/>

⁸¹ <https://ncrb.gov.in/hi/crime-in-india-table-additional-table-and-chapter-contents?page=18>

judiciary must unite and make sure that the department of police, we are relying upon acknowledge that “they are the savior, not a slayer.”

The following suggestions advocate for the elimination of custodial death from society;

1. Enacting an “anti-torture law”:

There is no ‘anti-torture law’ in India. Though the offence of custodial death is charged as a criminal offence under IPC, yet there is not even a definition of torture in any statute in India. Thus, it is pivotal to frame an adequate anti-torture law in India, which shall consist of a proper definition of torture, punishments for the offender and a proper redressal mechanism.

It is also essential to deliberate upon some important questions such as “*why there is no anti-torture law in India?*” “*Why only just four states have conveyed their agreement with the Prevention of Torture Bill, 2017, prepared by the Law commission?*”

2. Ratification of UNCAT (United Nation Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment):

UNCAT is a human rights treaty under the review of the UN. It aims to raise voice against torture or inhumane behavior, but India has not yet ratified to it. Thus, India lies among the 25 countries in the world those are yet to confirm with this treaty. Dr Ashwani Kumar said- “*As a dignitary, my head hangs in shame that my country stands in line, not with rest of the 170 civilized countries who have signed UN Convention against torture but with failed and semi-failed dictatorial regimes like Sudan and Brunei.*”⁸² This statement by Dr Ashwani Kumar highlights the magnitude of the need for enactment of an ‘anti-torture law’.

3. Ground-level implementation:

There are diverse laws and procedures which are already established to condense the probability of infringement of human rights, while the accused is in custody. Yet all the episodes keep turning up since there is no ground-level implementation of the procedures recognized.

4. Enactment of ‘Section 114B’ in the Evidence Act:

A 1985 Law Commission report directed the enactment of section 114-B into our Evidence act. But it is still not a law, although a bill was again introduced in 2017.⁸³ This

⁸² <https://www.youtube.com/watch?v=BOetupkmhxo>

⁸³ <https://www.civildaily.com/news/legal-principles-to-reduce-custodial-deaths-and-torture/>

provision is very important and it must be incorporated in the Evidence act as “it raises the presumption of culpability against the police if the accused dies in custody”.

5. A vigilant citizenry:

A vigilant citizenry is defined as the one, which is keenly watchful to detect upcoming danger to the society. If the citizenry becomes ‘vigilant,’ our goal of eradicating the custodial deaths from society will *per se* be achieved. It is pivotal for the citizens to be vigilant because their vigilance can make them *aware* of the atrocities by the police on the suspects/detenus, which can help them to fight injustice collectively.

6. Sensitization of media:

Media plays a key role in framing the minds of people. It is a very important aspect of raising awareness in society and highlighting the unjust act of people and authorities.

But, the media often becomes *unquestioning* (as seen during the *encounter of 4 accused of Hyderabad gang rape* or even during the recent *encounter of Vikas Dubey*). The media was *unquestioning* because it was highlighting these encounters with immense pleasure while criticizing the competence of the Indian Judiciary. Hence, it is the need of the hour that the media must be sensitized while reporting such instances. These instances are a gross violation of human rights, thus it should not be cherished or celebrated.

7. Proper education and training of police officers:

It is very important to provide ‘proper education’ to police officers about the human rights of the prisoner or the person in custody. It is also crucial to provide them with proper training, w.r.t. the behavior towards suspect or detenue, handling of suspect or detenue during the investigation or inquiry.

Thus, by duly educating and training the police officers, a respect for ‘the person of human’ and ‘human rights’ can be inculcated in them. Hence, when our savior will be possessed with these qualities and ‘common courtesy,’ the problem of custodial death will no longer prevail in society.

8. Setting an ‘Inspection committee’ in the police station for checking custodial violence:

The *Inspection Committee* should be set up in the premises of the police station as an independent committee in its sphere. Such a committee should consist of outsiders such as social workers, advocates etc. to keep a check upon the atrocities of the police officers on the suspect or detenue.

9. Criminals are curable humans:

Criminals are curable if they are provided with a proper chance to reform themselves. Inflicting torture on them during the stage of reformation can deprive them of the scope of improvement and can make them worse for the society. It's essential that society and police should be kind on them as *"everyone deserves a second chance, to rectify the former mistake."* Thus, it becomes important to understand that our kindness can reform them to become a good human, while the torture can make them worse than an animal.

10. Need for change in the mindset of society:

One of the reasons for the delay in the enactment of 'anti-torture law' is that everyone is spiraled in the mindset that if someone has committed a horrific crime than he deserves to be tortured, but this comes in contrary to the essence of laws in our country which advocates for the prestigious right to live with dignity.

Suggestions can be many; the scrutinized application of them is required. The society considers police to be the savior of the human, so does the law. The police department needs to realize its importance in a civilized society. They need to respect the human rights and the application of those rights, irrespective of who the person is. The authority comes with responsibility, thus, the police department has to comprehend their component to be liable for preserving the character of law and order in the country.

"Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate; only love can do that."

Martin Luther King, Jr