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**CUSTODIAL VIOLENCE**

**Akshita Khandelwal**

“Nearly all **men** can stand adversity, but if you want to test a **man’s** character, **give him power**”.-  
Abraham Lincoln.

## **INTRODUCTION**

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Custodial violence is the violence that is done in judicial and police custody where an individual who has done some crime is tortured mentally as well as physically<sup>1</sup>. It includes torture, death, and other excesses. This is not a new phenomenon. The law enforcement agencies had been using this on prisoners, criminals, and wrongdoers from ages. But in the modern era, it is a great concern for society. In India, Annual Report on Torture 2019 reveals that 1,606 of the deaths happened in judicial custody and 125 in police custody<sup>2</sup>. According to the National Crime Records Bureau (NCRB), 100 custodial deaths were reported in the year 2017. Death rate resulting from custodial torture increased by 9% from 2016 to 2017<sup>3</sup>. The basic cause of this situation is that the powers which are given to police officers to carry out their legitimate functions, they are misusing them to torture people, destroy lives and property and oppress the weak. Custodial torture and killing is an abuse of police power that violates not only fundamental but also the basic rights of an individual.

## **PROTECTION FROM CUSTODIAL VIOLENCE UNDER INDIAN LEGAL SYSTEM-**

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### **1. PROVISIONS UNDER INDIAN CONSTITUTION-**

- i. Article 20(1)- It prohibits the retrospective operation of penal laws.
- ii. Article 20(2)- It guards against double jeopardy for the same offence.
- iii. Article 20(3)-It provides that no person accused of any offence shall be forced to be a witness against himself.
- iv. Article 21- It provides that no person shall be deprived of life or personal liberty except procedure established by law.

The term “life and personal liberty” includes constitutional guarantee against torture, assault, or injury to a person who is in arrest and custody.

In **Dastagir v. State of Madras** it was held that if there is torture in Punishment, then it will be unconstitutional.

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<sup>1</sup>Sherlin, Custodial Violence in the aspects of criminology, Legal Service India, <http://www.legalserviceindia.com/legal/article-1050-custodial-violence-in-the-aspects-of-criminology.html>

<sup>2</sup> Five custodial deaths in India says report, THE HINDU, June 27,2020, 01:12IST

<sup>3</sup> Angel Mary Aju, Custodial Torture: A naked violation of human dignity, Law Escort, March 19,2020

Article 22(1) and 22(2) of the Constitution are also relevant for the present purpose because one of their motives is to have a check on the abuse of power of arrest and detention.

- v. Article 22(1)- It provides that person should be informed for the ground of his arrest, he has the right to consult and defended by a legal practitioner of his choice.
- vi. Article 22(2)- The right to be produced before a magistrate within a period of 24 hours of such arrest.

## **2. PROVISIONS UNDER CRIMINAL PROCEDURE CODE,1973(CrPC)-**

Section 76- The police officers should quickly bring the arrested person before the magistrate and that time should not exceed twenty-four hours excluding the time of journey from the place of arrest to Magistrate's Court.

## **3. PROVISIONS UNDER INDIAN EVIDENCE ACT,1872-**

- i. Section 24- If the confession made by the accused seems to be caused by inducement, threat, or promise, to the court, then that confession is irrelevant in the criminal proceeding.
- ii. Section 25- No confession made to the police- officer shall be proved as against a person accused of any offence.
- iii. Section 26- Confession made in the immediate presence of Magistrate shall be proved as against such accused person.
- iv. Section 27- When any fact is deposed to as discovered in the result of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates clearly to the fact thereby discovered, may be proved.

## **4. PROVISIONS UNDER INDIAN PENAL CODE-**

The general criminal law relating to murder, rape, assault, and criminal intimidation applies equally to custodial situations. The IPC criminalizes those acts which are tantamount to custodial torture, violence, or crime.

But in IPC, there is no provision which declares custodial killings as a separate offence.

The provisions which are relevant for the present purpose are-



- i. Sec.167- Public servant framing an incorrect document with intent to cause injury.
- ii. Sec. 330- It deals with voluntarily causing hurt to extort confession or to compel restoration of the property. If any person does this, he/she shall be punished with imprisonment and fine.
- iii. Sec. 331- If any person voluntarily causes grievous hurt to extort confession, or to compel restoration of property shall be punishable with imprisonment and fine.
- iv. Sec. 348- If there is wrongful confinement to extort confession or compel restoration of property, then the person shall be punished with imprisonment which may extend to three years and shall also be liable for a fine.

## 5. PROVISIONS UNDER POLICE ACT, 1861-

Every police officer who is guilty of any violation of duty, or the willful breach, or neglect any rule shall be liable for conviction before Magistrate for a penalty not exceeding three months' pay or imprisonment or both.

As we have seen all provisions which can prevent custodial violence but still there is no specific provision that can protect the rights of individuals against torture. Before 2 decades India has signed “Convention against Torture” but nothing has done by the legislature to enact the prohibition of torture laws till yet<sup>4</sup>.

### STATISTICS OF CUSTODIAL DEATHS

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YEAR	No. of Custodial Deaths
2011-12	108
2012-13	118
2013-14	93
2014-15	97
2015-16	92
2016-17	145

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<sup>4</sup> Shivam Jasra, Right of prisoners against Custodial Torture in India, Latest Laws.com, April 20,2020, [https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#\\_ftn27](https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#_ftn27)

2017-18	146
2018-19	136

Data from 2011 to 2015 is from the National Crime Records Bureau's Annual Report on crime statistics. This has not been published since 2016. Data from 2016 onwards is from parliament answer by the Minister of State in the Ministry of Home Affairs on June 26, 2019<sup>5</sup>.

On Sep. 27, 2005, Udaya Kumar and his friend Suresh Kumar were picked up by Fort Police in Thiruvananthapuram. Udaya Kumar had 4000 Rupees which police assumed to be stolen money. They both were subjected to third-degree methods of interrogation at the police station. Uday Kumar was pinned down on a table and the police rolled a large iron rod over his body. There were 22 injury marks on his body. <sup>6</sup>Capital Punishment has been awarded to police officials in this case.

On June 19, 2020, 59 year old P Jayaraj and 31-year-old son J Fennix were picked up by Sathankulam Police for keeping their shop open during the lockdown in Tuticorin. The torture of police in custody leads to their death. When they were released from jail, they were found profusely bleeding from the rectum. Both of them were in a disheveled state when they came out of prison. They have severe rectum pain and kept bleeding from their rectum. The eyewitness said that the whole night, both cried for help, and people living about 500 meters away from Police Station could hear that<sup>7</sup>.

These types of brutalities are done with people by police officials by misusing their power. No one has given the power to police officials to have these atrocities done with the people. There is a page report named "Bound by Brotherhood: India's Failure to End Killings in Police Custody" which examines police ignorance for regulations of arrest, deaths at the time of custody, and impunity for those responsible. It examines detailed investigations into 17 deaths that occurred in custody between 2009 to 2015 and more than 70 interviews were done with police officers, family

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<sup>5</sup> Nithya Subramanian, In charts: High approval for police violence in India-80% among police, 50% among citizens, Scroll.in, Sep. 08, 2019, 06:30 A.M., <https://scroll.in/article/936162/in-charts-high-approval-for-police-violence-in-india-80-among-police-50-among-citizens>

<sup>6</sup> PS Gopikrishnan Unnithan, 2 policemen given death in infamous Kerala Custodial death case, India Today, July 25, 2018, 19:34 IST

<sup>7</sup> Tuticorin custodial death: Kin say father-son duo was sexually abused in police custody, outrage in Tamil Nadu, India Today, June 25, 2020.

members of victims, witnesses, etc. It is found out that in these 17 cases, the police officials did not follow proper arrest procedures<sup>8</sup>.

## **STEPS TAKEN BY SUPREME COURT**

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### **1.KISHORE SINGH V. STATE OF RAJASTHAN<sup>9</sup>**

Supreme Court held that the use of third-degree torture by police is violative of Art. 21 of the Indian Constitution. The court 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<sup>10</sup>.

### **2. RUDUL SHAH V. STATE OF BIHAR**

It is a landmark judgment for state liability. In this case, there was the detention of the petitioner for 14 years even after his acquittal. So, the state was ordered to pay 30,000 to petitioner as an interim measure in addition to the 5,000 which is already paid<sup>11</sup>.

### **3.SAHELI V. COMMISSIONER OF POLICE**

In this case, a 9-year-old boy died after beaten by the Indian Police. The court held that the Delhi Administration is liable to pay a sum of Rs.75,000 to the mother of the deceased. The Delhi Administration may take proper steps for recovery of the amounts paid as compensation or part thereof from the officers who will be found responsible if they are so advised<sup>12</sup>.

### **4.NILABATI BEHARA V. STATE OF ORISSA**

In this case, it was held that the state could no longer escape liability in Public law and had to be compelled to pay compensation when it committed such gross violation of one's fundamental rights as well as the very basic human rights<sup>13</sup>.

### **5. JOGINDER KUMAR V. STATE OF UP**

In this case, the Apex Court gave the following guidelines-

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<sup>8</sup> India: Killings in Police Custody Go Unpunished, December 19,2016, 12:00 AM EST, <https://www.hrw.org/news/2016/12/19/india-killings-police-custody-go-unpunished#>

<sup>9</sup> AIR 1981 SC 625

<sup>10</sup> Nirman Arora, Custodial Torture in Police Stations in India: A Radical Assessment, The Indian Law Institute.

<sup>11</sup> (1983) 4 SCC 141

<sup>12</sup> (1990) 1 SCC 422

<sup>13</sup> AIR 1993 SC 1960

- An arrested person held in custody can have one friend, relative, or other person told that he has been arrested and where he is detained.
- The Police Officer will inform the arrested person about this right when he is brought to the police station.
- An entry will be made in the diary regarding who was informed of the arrest.

It will be the duty of magistrate before whom the arrested person is produced to see that these requirements have been complied with.

It was ruled that arrest cannot be made by a mere allegation of offence against a person or in a routine manner<sup>14</sup>.

## **6. D.K.BASU V. STATE OF WEST BENGAL**

The Court issued a list of 11 guidelines. They are as follows-

- Police Personnel should carry clear identification and name tags with their designation while making arrest and interrogation of the arrested person. Details of personnel who are handling the interrogation of the arrested person are clearly mentioned in the register.
- There must be an arrest memo made at the time of the arrest. It must be signed by the detainee and will contain the time and date of arrest.
- An arrested person held in custody can have one friend, relative or other person told that he has been arrested and where he is detained.
- Where the next friend or relative of the arrestee lives outside the town in question, he or she must be notified by the police of the time, place of arrest, and place of custody within 8 to 12 hours of the arrest.
- The arrestee must be informed of this right as soon as possible after he or she is arrested.
- An entry shall be made in the diary at the place of detention regarding the arrest of a person and it will also include the name of the friend who has been informed and list of names and particulars of police officers in whose custody the arrestee is detained.
- On request, the arrestee must be examined at the time of arrest and any injury must be recorded at that time and a copy of that report should be provided to arrestee and should be signed by both the officer and arrestee.
- There will be a medical examination of arrestee after every 48 hours.

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<sup>14</sup> 1994 SCC (4) 260

- Copies of all the documents such as medical reports, arrest memos should be sent to Magistrate for the record.
- During interrogation, the arrestee can meet his or her lawyer but not throughout the interrogation.
- At all the district and state headquarters, a police control room should be established where information related to arrest should be given within 12 hours of the arrest and it should be displayed on notice board<sup>15</sup>.

7. In the case of **Munshi Singh Gautam vs. State of Madhya Pradesh**<sup>16</sup> Supreme Court summarizes their concern about the problem of torture in Indian prisons by police. The supreme court stated that:

“The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system... the concern which was shown in *Ragbir Singh case* more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in the cases of *Bhagwan Singh v State of Punjab*, *Pratul Kumar Sinha v State of Bihar*, *Keval Pati v State of UP*, *Inder Singh v. State of Punjab*, *State of MP v Shyamsunder Trivedi* and the by now celebrated decision in the landmark case of *D K Basu vs. State of West Bengal* seems ‘not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody’.”<sup>17</sup>

Well, the Supreme Court has tried to reduce Custodial Violence by various judgments but the speed of custodial violence is at its peak and is still increasing day by day. So, it is necessary to take more preventive measures to stop this custodial violence.

### **PREVENTION OF TORTURE BILL, 2017**

India has signed the UN Convention on Torture in 1997, but in spite of numerous national and international opinions suggesting its ratification, has not taken this next step<sup>18</sup>. A bill on Prevention of torture was introduced in 2008 in Parliament. It has some lacked provisions therefore it is sent

<sup>15</sup> (1997) 1 SCC 416

<sup>16</sup> *Munshi Singh Gautam v State of Madhya Pradesh*, Appeal (Crl.) 919 of 1999.

<sup>17</sup> Shivam Jasra, Right of prisoners against Custodial Torture in India, Latest Laws.com, April 20, 2020, [https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#\\_ftn27](https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#_ftn27)

<sup>18</sup> Jinee Lokaneeta, Law Commission Report on Torture is a step in the right direction, but a just bill is still some way off, The Wire, Nov.15, 2017, <https://thewire.in/external-affairs/prevention-of-torture-bill-india-law-commission>.

to Select Committee. The Select Committee made a draft reviewing the bill and presented it to Upper House in 2010 but it did not pass from there.

A former Union Minister of law in 2016 filed a petition in Supreme Court for India's compliance with UNCAT. While responding to the petition Law Commission submitted its 273<sup>rd</sup> report which recommended the Government of India to ratify UNCAT and proposed the Prevention of Torture Bill, 2017. By this recommendation, the bill was introduced again in 2017 but still, there is no step taken for that<sup>19</sup>.

## **CONCLUSION AND SUGGESTIONS**

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The purpose of the power which is given to police officials is to protect the life and liberty of the citizens. The violence which has been done by them indicates their misuse of power and inhumanity due to various reasons. Police officers should also be held liable for violations of human rights. They have to remember that they are under the law and not above it. There should be a well trained and disciplined force of police that should ensure the human rights of various citizens.

### **There are some suggestions for this problem-**

1. Police officers should get permission to use scientific ways in an investigation like narco-analysis, brain mapping, etc.
2. The public should be aware of their basic human rights which helps them raise their voice.
3. There should be a ratification of the UN Convention against torture. If India ratifies the United Nation's Convention against torture, it will definitely help India to deal with these cases because then India will be answerable to the UN for every torture.
4. Including fields like ethics, psychology, etc. for selection of police officials which can make them ethical and broad-minded.
5. Laws should be made to reduce the pressure of politicians on police officers which would definitely reduce custodial violence to some extent.

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<sup>19</sup> Shivam Jasra, Right of prisoners against Custodial Torture in India, Latest Laws.com, April 20, 2020, [https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#\\_ftn27](https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/#_ftn27)