

POLICE IN INDIA: ADMINISTRATORS OF JUSTICE OR PERPETRATORS OF INJUSTICE?

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Abstract

Custodial Violence in India has always been a part of news highlights and gained the attention of masses. Even though our legal system is equipped with provisions for the protection of rights of persons under arrest, we fail to safeguard their quintessential Fundamental Rights. Maltreatment and brutal assault of accused/ convicted prisoners has been normalised in the system, leading to deaths of hundreds of innocent men. In order to get the accused to confess to the crimes, to dispose of the cases and sometimes to increase the number of convictions for promotions, the police men use methods of third degree torture, eventually leading to their death. When the validation to treat the prisoners comes from within the administration or bureaucrats itself, there is no stopping for these officials. India is signatory to several International Treaties which provide for abolishing use of torture or unnecessary physical force on prisoners. However, the effect of these instruments cannot be observed in our daily lives. This Article analyses the issue of custodial deaths in India with some of the reasons for a rise in the number of custodial deaths. Further, it provides a critical analysis of the implications of inflicting violence on prisoners. It not only violates their statutory and constitutional rights but several international treaties which require States to safeguard the interests of arrested persons and prisoners. Finally, it suggests reforms that can be brought in the system so as create a deterrence effect among those who deem it absolutely normal to take law into their own hands and bring the perpetrators of crimes to justice.

Keywords: Custodial Deaths, Violence, Police, Human Rights.

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I. INTRODUCTION

Police is considered as custodian of rights ensured to people; A system which preserves law and order and acts as a regulatory body. An efficient police system ensures better administration of law and order, the crimes are detected in the society and that the enforcement mechanism of the State runs smoothly. However, the current situation seems paradoxical. Jayaraj and Fennix Immanuel were subjected to brutal torture in police custody and later succumbed to death. This was not the first incident. The use of force by police in all situations is limited by the authority of the law. The police cannot inflict brutality on a person who is under its custody. The Supreme Court in the matter of *Kishore Singh v State of Rajasthan*¹ opined

‘...Nothing is more cowardly and unscrupulous 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.’

The prisoners in India have been subjected to torture and violence for a long time. India is witnessing an increase in number of custodial deaths in the past but lacks any specific law catering to the need to prevent custodial torture and safeguarding the prisoners from violence. The Police officers inflicting such injuries are often either transferred or are left with warnings. The death of the father-son duo in Tamil Nadu in Police custody has once

¹ AIR 1954 Raj 264.

again highlighted the need for proper legislation and accountability mechanism.

II. CUSTODIAL DEATHS IN INDIA

The issue of Custodial deaths or death of a person under police or judicial custody has been prevalent in India since a long time. However, more often than not, the cases do not get enough media coverage and go unreported, giving a chance to the perpetrators of such crimes to flee away. A shocking number of 1731 people have died in custody till date. A number enough to raise a concern not for just the administration but also the legislature, to enact laws to safeguard the rights of persons under custody.

The father-son duo in Tamil Nadu was subjected to barbaric acts of torture eventually leading to their death. Fennix’s lawyer, describing their state, told the authorities that the victim’s rectum was bleeding and it also appeared as if they were sexually assaulted and their blood-soaked clothes were changed four times². This was later confirmed by the staff of the hospital to which they were admitted. These acts are capable to disturb the conscience of a reasonable person.

In another case, a 22 year old man, died in Police custody when was arrested from his house on the suspicion of involvement in

² Nikhil Sharma, *The Custodial Death of Jayaraj & Fenix: What Happened With Them Is Nothing But Barbaric*, DUEXPRESS (Jun. 29, 2020), <https://duexpress.in/custodial-death-of-jayaraj-fenix-what-happened-with-them-is-nothing-but-barbaric/>.

theft³. In yet another case in Mumbai, Agnelo Valdaris and three other co-accused were arrested and beaten by the police so that they would confess to stealing goods. The suspects were warned by the police against revealing anything during the medical check-up. However, the medical report includes an account of Valdaris stating that his injuries were a result of police beatings. Just before he was about to be produced before the magistrate, he died. While police said he was hit and killed by a train while he was trying to escape, Valdaris's father believed that it was the police personnel who killed his son to prevent him from reporting about the torture to the magistrate⁴.

While the number of Custodial Deaths is increasing exponentially, the conviction rate is nil. The officers who commit such heinous acts undergo a departmental inquiry. This often leads their own colleagues conducting the investigation and suppressing important facts that can build up a case. Since, at the time the crime is being committed, it is only the police officer and the victim present in the room, nobody other than the police officer is capable of testifying about the facts and circumstances that led to violence. This provides the accused police officer an opportunity to protect himself. The maximum repercussions faced by

these officers is suspension for a few months or transfer to another district. It is time to bring reforms to the current laws so as to fix more accountability and responsibility on the wrong-doers.

III. CAUSE OF RISE IN CUSTODIAL DEATHS: NORMALISATION OF USE OF THIRD DEGREE TORTURE.

The Cambridge International Dictionary defines torture as '*the act of causing great physical or mental pain in order to persuade someone to do something or to give information.*'

The police in India also use torture as a means to extract information from the accused. It is the normalisation of use of third degree torture and justifying it in the garb of achieving the end i.e. extracting information that causes the number of cases of Custodial Deaths rise.

These methods of torture include⁵

- a. Beating;
- b. Electric shocks are applied to the most sensitive areas of the body;
- c. Victims head is forced under water till the stage of suffocation;
- d. Hot-iron rods and cigarettes are used to burn the victim's skin.
- e. Victim is suspended on end of his arm or by his legs for hours;
- f. During detention, filthy food and drinking water are provided;
- g. Prisoners are packed in small cell and forced to sleep by turns;

³N.S Kamboj, *Police Custodial Death: A Growing Abuse to Human Rights in India*, 36 JILI 372, 373 (1994).

⁴ Alok Deshpande, *Custodial Death, Abuse Triggers Inquiry*, THE HINDU (May 21, 2014, 3:59 AM), <https://www.thehindu.com/news/cities/mumbai/custodial-death-abuse-triggers-inquiry/article6033919.ece>.

⁵ Sangeeta Mandal, *Custodial Torture and Human Rights in India*, 1 Indian J.L. & Just. 75 (2010).

h. The victims are beaten under the feet until the sole of their feet is badly damaged.

Politicians, Bureaucrats and Senior Police Officials often describe use of torture as a necessary evil and have normalised its use to combat the rising number of crimes in our country. These statements reveal the sad state of affairs that exist in our country. While the police consider it necessary to extract the truth by all means possible and thereby facilitating the administration of justice, what they fail to consider are the *'inalienable'* Human Rights of the prisoners, in effect leading to gruesome acts of Injustice.

IV. INFRINGEMENT OF HUMAN RIGHTS

Human Rights are attributed to a person right from the moment he is born and last till the person's lifetime. These rights are inalienable and cannot be abrogated away under any circumstances. Section 2(d) of the Act ⁶ defines Human Rights as *"human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India"*.

Once a person is arrested, he does not cease to be a *'human being'*. Thus, naturally human rights are also available to a person under arrest. For this very reason it becomes pertinent that the policemen treat the arrested person with dignity and respect these

⁶ Protection of Human Rights Act, 1993, No.10, Acts of Parliament, 1993 (India).

inalienable rights. A person's Right to Life and Right against Torture cannot be violated in the garb of 'national security' or emergency and are non-derogable⁷. Protection and safeguarding human rights has always been a global concern. The United Nations with the cooperation of several member states has been constantly advocating for recognition and protection of Human Rights. Several treaties, covenants and conventions have been brought into effect in order to achieve this goal. India is a signatory to several such treaties which make it mandatory for India to prevent any acts that promote the use of torture and ensure that the fundamental freedoms of individuals or groups is safeguarded.

In this light, it would be pertinent to look at the provisions enshrined under these international instruments⁸ that aim at safe-guarding the rights of prisoners and prevent torture.

Article 1,3,5,6,8,9, 10 and 11 of the Universal Declaration of Human Rights (1948); Rules 30-34 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955 and approved by Economic and Social Council by its resolutions 663C (XXIV), 1957 and 2076 (LXII) 1977. (Rules no. 30-34); Articles 10, 22(2), 24 and 26 of the Draft Principles on Freedom from Arbitrary Arrest,

⁷ International Covenant on Civil and Political Rights, Art. 4(2); Justice K.S. Puttaswamy (Retd.) and Another v. Union of India (2017) 10 SCC 641

⁸ UN, Human Rights: A Compilation on International Instruments 1-2, 8-9, 77 and 82-82 (1983).

Detention and Exile (1963) ; Declaration on the Protection of All Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1975); Articles 6(1), 7, 9, 10 and 14-16 of the International Covenant on Civil and Political Rights (1976) ; Articles 2-5 of the Optional Protocol to the International Covenant on Civil and Political Rights (1976); Articles 2,3,5 and 6 of the Code of Conduct for Law Enforcement Officials (1979); and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987).

These conventions and treaties explicitly provide that a state must refrain from using any means of torture and respect the civil rights of all individuals. India has ratified all the above mentioned instruments except for the Option Protocol and the Anti-Torture Convention, despite having signed them for more than 40 years now. In light of the recent unfortunate death of the father-son duo, gaining global attention, it is time for India to reconsider its position on the Anti-Torture laws and bring them into effect in order to successfully safeguard the rights of prisoners and persons under custody from arbitrary and unlawful acts of police authorities.

V. DEFIANCE OF CONSTITUTIONAL AND STATUTORY PROVISIONS:

The Apex Court expressed concerns, deeply disturbed by the police torture in the case of

*Raghubir Singh v. State of Haryana*⁹ case, and observed that

Their lives and liberty [of the common citizens] are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic torture some poignancy the violent violation is perpetrated by the police arm function is to protect the citizens and not to commit against.

The safeguards provided under Indian laws to persons under custody are fundamental in nature and cannot be violated under any conditions. In *State of Maharashtra v. Prabhakar Pandurang Sangziri*¹⁰ the court held that during the detention of a person in prison, he cannot be deprived of his basic fundamental rights. The same has also been observed in the case of *T.V. Vatheeswaran v. State of Tamil Nadu*¹¹, the Hon'ble Apex Court held that the basic fundamental rights of a human being do not cease to exist when he is confined in the four walls of a prison and therefore, must be respected at all times. The Constitution of India recognises these rights under Article 19,20,21,22,32 and 226. Furthermore, they also have statutory rights under the Indian Penal Code, 1860 (IPC); the Criminal Procedure Code, 1973 (CrPC) and the Indian Evidence Act, 1861 (Evidence Act). Several Police and Prison Acts and manuals also carry rules and regulations against custodial torture.

⁹ AIR 1980 S.C. 1087.

¹⁰ AIR 1966 SC 424.

¹¹ (1983) 2 SCC 68.

In spite of having constitutional and statutory provisions in place to secure the rights of persons being arrested, we see barbaric and brutal acts of murder of persons under custody by the police officials, who seem to pay no heed to the laws in force. The police officers not only violated the rights granted to them by the Constitution of India which are inalienable, but also overlooked several statutory provisions including the sections of CrPC. The jurisprudential development by the Supreme Court if India has given a broad interpretation to the term 'life' which now include Right Against Illegal Detention¹², Right to Speedy Trial¹³, Right to Fair Trial¹⁴, Right to Bail¹⁵, Right Against Handcuffing¹⁶ and the Right Against Cruelty and Excessive Punishment¹⁷ among many others. The criminal procedure code has further safeguarded the interests of the accused by empowering the magistrate under Section 176 (1) of the code to hold an independent inquiry, finding the cause of unnatural death of a person in custody. Section 176 (1A) has laid down special provisions to deal with cases of death, disappearance or rape in police custody, where in such cases the magistrate is empowered and shall have to hold an inquiry other than the inquiry or investigation by police. The Section uses the

¹² Joginder Kumar v. State of UP, (1994) 4 SCC 260.

¹³ Hussainara Khatun v State of Bihar, (1980) 1 SCC 81.

¹⁴ *Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374.

¹⁵ *Babu Singh and others v. State of Uttar Pradesh*, AIR 1978 SC 527.

¹⁶ **Prem Shankar Shulka v. Delhi Administration, (1980) 2 SCC 526.**

¹⁷ *Jagmohan Singh v State of UP*, AIR 1973 SC 947.

word '*shall*' and therefore it makes it mandatory for the magistrate to hold inquiry in such matters. The code also puts a check on the power of the Magistrate to order remand by providing in Section 167(2) proviso (b) that the accused person cannot be detained in custody for more than 24 hours unless he is produced before the magistrate in person for the first time and subsequently every time till the time he is in the custody of police.

Moreover, the landmark case of *D.K. Basu v. State of West Bengal*¹⁸, the Hon'ble Supreme Court issued guidelines that were necessarily to be followed by police officer in case of making an arrest. These guidelines were necessary to ensure that the person being arrested is informed about his rights and also his family is made aware about his whereabouts. But the police authorities seldom overstep the powers granted to them under law and are able to escape responsibility for their actions.

VI. ROLE OF MAGISTRATE: RESCUER FROM INJUSTICE

Section 57 along with Section 167 of the CrPC requires that the accused/ suspected is to be produced before the magistrate within 24 hours of the arrest. It is then the magistrate who can either order the release or custody of the accused. The purpose of the provision is to provide legality to arrest and detention and at the same time limit the powers of Police in matters of arrest. Since magistrate is the first person before who the accused is produced, it becomes his duty to enquire from the accused

¹⁸ AIR 1997 SC 610.

about any acts of torture or ill-treatment by the police. If there are evidences of any such unlawful acts the magistrate should not grant further custody. Section 54 also implies that magistrate should also send the accused for medical examination if there is any evidence of torture or violence. Magistrate thus plays a very crucial role in the Indian criminal justice delivery system.

In the case of *Arnesh Kumar v. State of Bihar*¹⁹, the Supreme Court held that ordering of remand by the magistrate needs to be much more than just a mechanical activity. The magistrate needs to be satisfied about the presence of extra-ordinary circumstances that call for ordering remand. When a life has been lost or a person has been subjected to torture, or where an accused has been subjected to rape while in the custody of Police, the role of the magistrate, in whose local jurisdiction the offence has been committed becomes quintessential.

Further, Section 176 (1) of CrPC empowers the magistrate to hold an independent inquiry, finding the cause of Unnatural Death of person in custody. The insertion of section 176 (1A) through amendment in 2005, has laid down special provisions to deal with cases of death, disappearance or rape in police custody, where in such cases the magistrate shall have to hold an inquiry independent from the inquiry or investigation by police. In last 15 years, the amended section remains near dormant. In wake of the same, a petition was filed

before the Supreme Court checking upon the implementation of the said section. The petition further stated that since the enactment of the provision, 1,373 persons have died in police custody, legal or illegal. But the States have proceeded with the mandatory judicial inquiry in just 298 of those cases.²⁰ The National Human Rights Commission has also issued guidelines in this regard which are to be followed in magisterial inquiry and has set a time period of 2 months for the completion of inquiry by the magistrate²¹.

As many as 100 people died in police custody in the year 2017 which saw no conviction of any police officer in this regard²². Despite having a provision in place, its implementation is very rare. The magistrate has been bestowed with a legal duty to conduct an inquiry when a peculiar situation arises, but its poor implementation has not only contributed in increasing the number of cases but has also prevented many offenders from being punished.

VII. NEED FOR BRINGING REFORMS IN THE SYSTEM

²⁰ Sukanya Shantha, *Most States Have Flouted Mandatory Judicial Inquiry into Custodial Deaths for 15 Years*, THE WIRE (JUL. 7, 2020), <https://thewire.in/rights/custodial-death-judicial-inquiry-crpc>.

²¹ *Custodial Deaths : What Is The Procedure For Inquiry?*, LIVE LAW (Jun. 28, 2020, 12:58 PM), <https://www.livelaw.in/know-the-law/custodial-deaths-what-is-the-procedure-for-inquiry-159030?infinitemscroll=1>.

²² *NCRB data: 100 Custody deaths, no one convicted*, THE NEW INDIAN EXPRESS, (Oct. 28, 2019, 08:00 PM), <https://www.newindianexpress.com/nation/2019/oct/28/100-custody-deaths-no-one-convicted-2051172.html>.

¹⁹ (2014) 8 SCC 273.

After several years of having signed the Anti-Torture Convention, India has failed to ratify it and bring it into effect in its domestic laws. The Prevention of Torture bill was introduced and passed by the lower house of the parliament in 2010. It was further sent to the Select Committee of Rajya Sabha which suggested certain amendments to the bill. Before they could be considered or implemented, the Upper House dissolved and the bill lapsed. Thereafter, in 2018 the bill was reintroduced in the Upper House and is currently under discussion.

Despite of Statutory and Constitutional norms in place that protect the rights of arrested persons, we see a rise in the number of Custodial Deaths. This calls for a reformation in the system to effectively implement the laws in force and the guidelines issued by courts time and again to safeguard the interests of persons under Custody.

First, India must expeditiously ratify the Anti-Torture Convention and bring into effect the Prevention of Torture Bill which has been on hold since 10 years. The need for having an Anti-Torture law in place is now more than ever. This will ensure that the police officers do not exceed the power granted to them under law and do not use inhumane means of extracting confessions from accused.

Second, amendments should be brought to the Indian Penal Code to increase the punishment for causing death of a person by using torture as a means to extract confession, to that of life imprisonment.

Third, candidates appearing for the position of police officers must be scientifically and carefully selected. Thereafter, rigorous training should be provided to them regarding the lawful methods to carry out interrogation. The training should imbibe within them, the spirit to work only by the rule of law. During training they should be strictly instructed against use of unnecessary force or torture.

Fourth, apart from the already existing guidelines to be followed during arrest, as provided in the D.K. Basu case, it must also be made mandatory for the arresting officer to take the accused to the nearest police station from the place of crime. Taking the person in custody to a police station of their favour should not be permitted.

Fifth, Medical Examination of the arrested person must be conducted after he is arrested to keep a check on any signs of torture or use of force on the person. If evidence of unnecessary use of force is found on the body of the accused, he must immediately be produced before the magistrate and a complaint must be lodged against the concerned police official.

Sixth, the threshold for situations in which a magistrate must order remand should be high. Unless a magistrate is absolutely satisfied with the presence of extra ordinary circumstances that call for ordering remand, he must refrain from doing so.

Seventh, Judicial Inquiry should be conducted on magistrates who are negligent in fulfilling their duty and fail to comply with the

necessary legal requirements to safeguard the rights of accused persons.

Eighth, Institutions should be set up for the current police force to psychologically train them against the use of force and torture and must be trained with better interrogation techniques so as to reform their methods of extracting information from the accused.

Ninth, the Laws of Evidence must be amended in order to shift the burden of proof in cases of Custodial Violence on the offender to prove that he is innocent and no recourse other than use of force was possible to handle the situation.

It is time to bring into force the above mentioned suggestions in order to Police the Police, who till now have been fearlessly committing acts of crime without worrying about the repercussions. It is time to remind the wrong-doers that nobody is above the law and that no crime shall go unpunished. It is time to bring forward a well-trained, disciplined and law abiding police force to help in better administration of justice rather than creating hindrance in the process of moving towards justice.

VIII. CONCLUSION

Deaths in the custody of police is not a new phenomenon. The issue which is often left undebated and unspoken about has once again attracted attention. The need to make reforms and bring about legislative changes is now must. The legislators need to understand the seriousness of the issue and appropriate measures should be made to prevent the loss

of lives in such tragic and inhumane ways. Use of force has been permitted under certain circumstances and this authority is derived from law itself, which cannot be questioned. In spite of having legislations in place to secure the life and liberty of all humans, reports from several Human Rights organisations regarding the abuse of Human Rights, we see no impact on the law-makers and the number of deaths in police custody rising at a shocking rate. The failure of existing legal provisions to safeguard the interests of individuals and protect them against violence has not only let the injustice happen to those who were subjected to torture in custody but also let those policemen roam free without being penalised. Those involved in the process should be made more accountable and answerable for their actions. With over 300 custodial deaths between 2008-2016, the conviction rate still stands at zero. In present scenario the role of magistrate has become all the more important who is empowered to conduct an independent enquiry in cases of custodial anomalies to establish a mechanism for fixing accountability for the actions of Police. Strict actions are required so as to serve the purpose of law and to create a deterrence effect which in turn can be a turning stone in prevention of such custodial violence in future.