



## CUSTODIAL DEATHS IN INDIA

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### Abstract

*In India, we have seen many instances, where many suspects had died when they were in custody of police. Custodial deaths are one of the significant issue and it needs to be addressed. Strict punishments and action must be taken against the erring officers. Even individual, even suspects and convicts has fundamental rights. Custodial death is violating article 20 and 21 of Indian Constitution. Not only these it also violates many international conventions, sections under Indian Evidence Act, Code of Criminal Procedure. In order to control custodial deaths, Supreme court has issued guidelines. Custodial deaths includes the death happened during police custody, judicial custody. Most of the deaths happens because of the torture caused to the suspects by the police. Neglect, abuse, torture in custody are the main reasons for the death of the person in custody. We cannot say that all deaths which happened in the custody are because of torture, some can be natural also. For example, the suspect may be suffering from illness due to which he died. This article mentions about the custodial deaths, legislation's which helps to control the custodial deaths, rights of arrested person, case laws relating to custodial death. The article deals with the concept of custodial death in India and the state having highest custodial deaths. Reasons for custodial death and the punishment for the officers involved in the death of the suspect were discussed in this article. Fake encounters are also one of the form of custodial deaths. It violates human rights and fundamental rights of an individual. Sometimes, innocent person who has no connection with the crime will be tortured to admit that he has committed the crime and due to which he may die due to torture.*

**KEYWORDS:-** Custodial death, Torture, Neglect, Abuse, Fundamental rights, International conventions, Indian Evidence Act, Code of Criminal Procedure, Police custody, Judicial custody.

### I. Introduction

Custodial death, it is not a new concept in India. It has been in India from British period and even before. From past 50 years there is a rise in number of custodial deaths in India. Supreme courts through judgments has given guidelines regarding arrest, encounters. Custodial death is defined as death caused during pre trial or after conviction. If a person is arrested by the police, then the family members of such person must be informed about the arrest. The person should be informed about the ground of arrest, medical examination needs to be done. These are the basic and important rules which has to

be followed while arresting a person. The arrested person must be taken before the magistrate within 24 Hours of his or her arrest. All these steps has been taken in order to prevent custodial death. It is the duty of police to protect the citizens, but sadly in cases of custodial deaths because of police torture, the deaths were being happening. Not only the deaths happened in custody of police and judicial custody amounts to custodial death, but fake encounters also included in custodial death. Enquiry will be conducted against the officers who were involved in the custodial death of the suspect.

The reason for choosing this topic is to know about the concept of custodial death in India and the present condition of custodial deaths in India. This article helps to understand about the custodial deaths in India, the legislation's which protects the suspect's and convicts from atrocities. The significance of this article is one can understand the reasons for custodial death, instances of custodial death in India and it explains about the conventions, legislation's, Constitutional article's which deals with the right of an individual against atrocities. This article explains about the case laws relating to custodial deaths in India.

## II. Custodial death

Custodial death is one of the cruel form of human abuse. In Custodial Death is that "concept where any arrested person died in police custody due to the torture done by any police or officer in charge of such custody, the custody may be police custody or magistrate custody." As mentioned, the custodial death can be divided into three types, death happened in police custody, death happened in judicial custody, death caused by army or paramilitary forces. In the name of interrogation, police often torture the suspect in order to make him confess the truth. During this process, "if police officer uses unnecessary force, ultra virus of their powers and torture convicts beyond the limits to take the life of convicted person<sup>29</sup>", in these cases the police officer will be held guilty of custodial death. Indian constitution protects the convicts from self incrimination and provides right to life.

The safety of the person, who is in the custody of police is the responsibility of police. However, all deaths cannot be termed as custodial deaths. As the death may be caused due to natural reasons. Apart from these medical reasons, police has the responsibility to protect the life of an individual. If deaths are happening

during the custody of the police then public may lose confidence over the system. Custodial death is against the human rights and no one has the right to take one's life except according to the procedure established by the law.

### 1. Police custody

Police custody is different from judicial custody. When a person is arrested on suspicion of committing a crime, the person must be taken before judicial magistrate within 24 hours of his arrest. After submitting him before magistrate, they can ask for police custody for a period of 15 days. Judicial magistrate cannot give the custody of suspect for a period more than 15 days. According to section 57 of CrPC, police officer cannot detain a person for a period more than 24 hours. If investigating officer is needs to detain the person for a period more than 24 hours, then special permission needs to be taken from the magistrate under section 167 of CrPC.

### 2. Judicial custody

In police custody, the accused is kept in police lock up and police can interrogate him. Whereas in judicial custody the accused in kept in jail and not in physical custody of police. Interrogation of accused is cannot be done by the police unless the court permits the same.

### 3. Judicial remand

Section 167(2), 209(b) and 309(2) of CrPC empowers the court to remand custody of an accused. Section 167 comes during initial stage of investigation and it involves both judicial and police custody. Section 209 comes when the magistrate commits the case. Section 309 comes after taking the cognizance and involves only judicial custody. The Judicial Magistrate cannot extend the period of remand for more than 15 days. "Section 167(2) contains provision for the magistrate to remand an accused for a term of 60 days maximum for offenses that are not punishable with life imprisonment, death or imprisonment up to 10 years, When it comes to offenses that are

<sup>29</sup> Anjee, Custodial Deaths and Misuse of powers, LegalServiceIndia, <https://www.legalserviceindia.com/legal/article-6816-custodial-deaths-and-misuse-of-powers.html> (Last Accessed on 10 July 2023)>

punishable with life imprisonment, death or imprisonment up to 10 years or more, the magistrate can remand judicial custody for a maximum term of 90 days.<sup>30</sup> If the charge sheet is not filed within these period then the person should be released on bail and this is also known as default bail.

The most important part in cases of custodial death is to prove the cause of death. In most of the case, it is difficult to prove the death is caused due to police torture. In some cases, police may tamper the evidence and it becomes impossible to prove the cause of death. In some cases, the injury will be in such nature that it is difficult to tell whether the injury is caused due to accident or police torture. For example, if a person dies due to broken ribs while he was in police custody, then one cannot say surely that the ribs were broken because of severe beating by police. Post mortem plays an important role in proving the custodial death. But there is a chance that the police may pressurize the doctor to change the report. Apart from post-mortem, inquiry and investigation may show the traces of police tortures. In many cases, action was taken against the officers where the inquiry report shows that there are few traces of torture.

One of the reason why there is a raise in custodial deaths is due to not taking stringent action against those officials who are involved in torture. Supreme court has given guidelines to prevent the custodial death. It is the responsibility of police to protect the lives of people and custodial death is most inhuman form of torture. Strict action must be taken against the officers who are involved in torture and fake encounters.

### III. Arrest

When a crime is reported, the police will arrest the person whom they are suspecting to be the accused. Custodial deaths mostly happens in police custody, when the person is arrested.

Most of the people does not know about their rights. Such as legal aid, right to have a lawyer, right against self incrimination. Even, the fact of arrest will not be communicated to his family members. But through a land mark judgment Supreme court paved a way to control the custodial deaths by giving the guidelines with respect to arrest.

### D. K. BASU V STATE OF WEST BENGAL 1997<sup>31</sup>

A letter written by D.K.Basu, who is executive chairman of legal aid organization wrote a letter to Supreme Court by affixing the newspapers cutting from statements, telegraph which shows custodial death, torture. When the letter is in consideration one Aligarh based lawyer sent letter to Supreme court where he has given details of death of one migrant labourer in police custody. Court considered both these letters as writ petitions and sent notices to all state government, in order to know the condition of police custody in their state. It also send notice to law commission, the suggestion made by the commission is that under section 114B in form of injury, death in police custody should be added to Indian Evidence Act.

Supreme court in these circumstances recognized the need to develop **Custodial Jurisprudence**. In case of **Jogendra Kumar V State of Punjab**, court started initiation for concept of custodial jurisprudence but in the present case it reached into culmination. Guidelines regarding arrest of an individual was given.

### Guidelines

1. Police officer, who is activating arrest must wear clear identification name, designation and it should be clearly displayed.
2. While making the arrest, memo of arrest should be prepared and it should mention time, date of arrest and it shall be signed by family or friend or one of the respectable member of community and arrestee.

<sup>30</sup> Mohammad Sahil Khan, Custodial deaths, Ipleaders, <https://blog.ipleaders.in/custodial-deaths/>, (Last accessed on 10 July 2023).

<sup>31</sup> D.K. Basu V State of West Bengal 1997 (1) SCC 416.



3. If the family members are not present in that place, then within 8-12 hours police officer has to mention the facts to district organization where the family members are residing.

4. The arrested person should be told that his right to inform family member is declared by supreme court as a part of article 21 of Indian constitution.

5. Inform next family member, friend and person who is interested in welfare.

6. Case diary has to be maintained and name, address, under what offenses he is arrested, police officer's rank and designation, under whose custody presently the person is, should be mentioned in that case diary.

7. Medical examination will be done and list of minor, major injuries will be noted. For every 48 hours, while is in custody he shall be subjected to medical examination.

8. He can meet his lawyer, present during investigation but not through out investigation.

9. At every district, there will be police control room and the factum of arrest will be informed.

#### IV. Fake Encounters

Fake encounters are one of the form of custodial death. When writ petition was filed before supreme court showing in between 1995-1997, there were around 133 reported cases of encounters within state of Maharashtra. Supreme court came out with the guidelines to control encounter related deaths.

#### PUCL V State of Maharashtra, 2014<sup>32</sup>

##### Guidelines

1. When any officer receives any tip off about criminal activities. It must be recorded in writing or electronic form. If accused is killed immediately FIR has to be issued against police officer and party.

2. Investigation must be done by officer of CID branch or any superior officer from other police station.

3. While doing the investigation 8 main points needs to be observed.

I. Colour photo of victim deceased.

II. Site plan has to be prepared.

III. The fire arms used by victim should be collected for the purpose of obtaining fingerprints and sent for purpose of chemical analysis.

IV. The topography of area should be mentioned.

V. If there are any villages nearby then the witnesses from that village shall be questioned.

VI. Statements, details of witnesses must be collected.

VII. Whether the nature of death is accidental or natural must be mentioned.

VIII. All the evidences must be preserved for the purpose of trial.

4. There must be magisterial inquiry and NHRC, SHRC must not involved when the investigation is done impartially but when there is any complaint then they may involve.

5. If victim survives, then the statement of victim must be recorded. FIR must be forwarded to magistrate and trial should commence as soon as possible.

6. Biannual statement should go to NHRC, SHRC.

7. If the crime is proved, the accused will be prosecuted according to IPC and disciplinary action must be taken. Compensation must be provided to victim's family.

8. Police must surrender their weapons for investigation, the family of accused police officer must be informed.

9. No gallantry awards for officers involved in encounter killings.

<sup>32</sup> PUCL V State of Maharashtra (2014) 10 SCC 635.

10. If family of victim finds guidelines are not followed then they can go to District and Sessions Judge and file a complain.

### V. Habeas Corpus

Habeas corpus is one of writs, which means to produce the body. It is the writ petition filed before the court asking the court to order to produce the individual. If any individual is taken away by police and if the family members of the individual cannot able to find the person, then in such cases they can file the writ of habeas Corpus. In most of the cases of custodial death, the writ of habeas corpus are filed so, that the person can be brought before the court. "A person can report an unlawful detention or imprisonment to a court and request that the court order the custodian of the person, usually a prison official, to bring the prisoner to court, to determine whether the detention is lawful." Article 32 of Indian constitution deals with the writs. Whenever there is illegal detention, arrest the person can approach the court through article 32 of Indian constitution. It is the fundamental right which is provided by the Indian constitution. It protects the person from indefinite imprisonment and illegal detention. In many cases, the writ of habeas corpus helps the individual to come out of illegal detention. This kind of writ petition is related to custodial death. If any custodial death is happened, it can be identified by filing the writ petition. It can be considered as first step to find the individual, who has been in illegal custody or died during custody. The right of a citizen to obtain a writ of habeas corpus as a protection against illegal imprisonment. "It is a writ frequently is requested on behalf of one in police custody for the purpose of requiring the police to either charge the arrested person with an offense or release that person."<sup>33</sup>

### VI. Custodial death under Indian Penal Code

1. **Section 302** – if death is caused by police officer, then he can be held liable under section

302 of IPC and can be charged for the offence of murder.

2. **Section 304** – the police officer can be held liable for culpable homicide.

3. **Section 304A** – it deals with the death caused by negligence.

4. **Section 330, 331** – it deals with the punishment for causing voluntary hurt and voluntary greivous hurt.

### Indian Police Act

1. **Section 7** – this section empowers senior official to suspend a police officer who has been negligent in discharging their duty.

2. **Section 29** – it provides punishment for negligent officers, the maximum punishment is up to 3 months.

### Indian Constitution

1. **Article 20** – it protects the individual from self incrimination. No one is compelled to give evidence against oneself.

### Code of Criminal Procedure

1. **Section 163** – it prohibits the investigating officer to give any threat or any kind of inducement to the accused to make the confession.

2. **Section 164** – magistrate should take the signature of the accused and make sure that the confession made is voluntary.

3. **Section 46** – one cannot be tortured to death, if the alleged offence is not punishable with life imprisonment or death.

4. **Section 49** – it prevents unnecessary restraint against the suspect.

### Indian Evidence Act 1872

1. **Section 24** – "It declares that all the confessions made by the accused by succumbing to the threat, promise or inducement of investigating agencies would not

<sup>33</sup> Habeas Corpus, Britannica, <https://www.britannica.com/topic/habeas-corpus>. (Last Accessed 12 July 2023).

be admissible in the court of law, This Section primarily works for preventing the accused to give confessions against his will.”

**2. Section 26** – it mentions that the confession made in custody and in absence of magistrate cannot be considered as admissible evidence.

### International Conventions

International Human Rights Law, 1948, United Nation charter, The European Convention for the protection of Human Rights and Fundamental Freedom, 1959 are some of the conventions which focuses on rights of prisoners.

### VII. Statistics of custodial death in India

“The National Human Rights Commission (NHRC) has recently raised an alarming figure related to custodial death in the period between 2021-2022. As per NHRC, there were 2,150 reported cases of death in judicial custody and 155 cases of death in police custody, Uttar Pradesh held the record for the highest number of deaths (448) in judicial custody.”

### VIII. Compensatory Jurisprudence in custodial deaths

#### Nilabati Behera V State of Orissa<sup>34</sup>

In the present case, a letter was written by Nilabati to Supreme court stating that her son was taken to police station and on the next day, he was found dead near railway track. The court has taken suo moto action and considered the letter as writ petition. After considering the facts of the case, supreme court awarded a compensation of 1,50,000 RS.

### IX. Conclusion

Custodial death is the most violent form of human abuse and it violates article 21 of Indian constitution. They should be prevented by taking necessary steps. The guidelines which were provided in the case of D.K. Basu V State of West Bengal must be followed and strict action must be taken against the officers who are

involved in custodial death of an individual. The report of custodial deaths must be collected for every 6 months and if there is any case of custodial death, inquiry must be conducted and if it is proved compensation must be provided to the family of victim.

### X. References

1. Anjee, Custodial Deaths and Misuse of powers, LegalServiceIndia, <https://www.legalserviceindia.com/legal/article-6816-custodial-deaths-and-misuse-of-powers.html> (Last Accessed on 10 July 2023) >
2. Mohammad Sahil Khan, Custodial deaths, Ipleaders, <https://blog.ipleaders.in/custodial-deaths/>. (Last accessed on 10 July 2023).
3. Habeas Corpus, Britannica, <https://www.britannica.com/topic/habeas-corporus>. (Last Accessed 12 July 2023).
4. Nilabati Behera V State of Orissa 1993 AIR 1960.
5. D.K. Basu V State of West Bengal 1997 (1) SCC 416.
6. PUCL V State of Maharashtra (2014) 10 SCC 635.

<sup>34</sup> Nilabati Behera V State of Orissa 1993 AIR 1960.