

Custodial Crime: One of the Worst Crimes in India

Muskan Kumari*, Vaibhav Vishal

Abstract

Custodial crime is perhaps one of the worst crimes which can be committed below the nose of any law governed country. Moreover, custodial deaths put a heavy blow at the so-called law governed society. The author through this study discusses the grey areas in the justice system and its consequences which lead to the custodial crimes. The study also throws a beam of light on the reforms and the guidelines set by the landmark case of D.K. Basu vs. State of West Bengal. Overall, this study tries to cover the journey of leading cases starting from Tukaram and Another v. State of Maharashtra (Mathura Rape case) to D.K. Basu v. State of West Bengal.

Keywords: Custodial crime, incarceration crime, landmark case, molestation

INTRODUCTION

One of the worst crimes in India is incarceration crime. As we compare it with other crimes it is heinous and it breaches the custodial trust of a public servant. Custodial crime simply means torturing an arrested person who is in custody by a police officer subject to rape and even death also. All forms of physical and mental suffering inflicted on the victim constitute a clear violation of their human rights. There have been 1,888 custodial deaths in the last 20 years, however, only 26 police personnel were convicted. The cases of custodial violence are increasing day by day even after lots of guidelines and reforms. In 2021, there were 151 cases of custodial death reported. The police personnel are misusing their power and it simply breaches the trust of citizens over public servants.

Policemen must maintain law and order but, ironically, they are breaking those laws and using third-degree torture over prisoners which is not permitted, killing the arrested person in the name of encounter as we have seen in Vikash Dubey and Hyderabad encounter case, doing inhuman and ferocious acts which include rape of women, torture, violently beating prisoners which further ends up taking their lives and molestation.

Those who have lost their lives in police custody are not accused. Their crime is not proven in the court of law. If policemen do such acts and end up taking the lives of prisoners without providing them justice then what is the role and need of the judiciary? As per the Police Act 1861, the police force is a tool for preventing and detaining criminals, but what happens when officers go beyond their responsibilities and abuse their authority? There is a need for the legislature to come up with strict legislation in order to prevent custodial crime.

*Author for Correspondence

Muskan Kumari
E-mail: muskankumari2111@gmail.com

Student, Department of Law, Chanakya National Law University, Patna, Bihar, India

Received Date: July 22, 2022
Accepted Date: January 04, 2023
Published Date: January 06, 2023

Citation: Muskan Kumari, Vaibhav Vishal. Custodial Crime: One of the Worst Crimes in India. National Journal of Criminal Law. 2022; 5(2): 19–25p.

RECENT CASES OF CUSTODIAL DEATH

News about police violence in India is highly undervalued and it has become so ordinary that it has begun to vanish from people's minds. Custodial deaths in India increased in 2020–2021 and the rise indicates the need for an investigation into how the police personnel violate the law and obliterate the last vestige of human rights.

Tamil Nadu Custodial Death Case 2020

This is a case of custodial death of a father-son duo named Jeyaraj-Bennicks. In Tamil Nadu's

Thoothukudi district, they operated a small phone shop. The only crime Jeyaraj committed was that he kept his shop open until around 8:15 which was against the lockdown rules imposed by the state government. He was detained by police officers. When his son Bennicks knew about his father, he rushed to the police station where he saw his father was beaten up brutally, he tried to protect his father but the police officer also tortured and sexually assaulted him and both were booked under several sections. They were taken into custody for 3 days and tortured pathetically over a minor violation and finally they died. The police simply tried to cover up the matter and said that they died due to heart ailments but the report of forensics clearly shows that the duo died due to the blunt injuries. When the matter went to the supreme court, it was held that relief cannot be granted at this stage and here the court declined to grant bail to those two police officers accused in the custodial death case [1]. This is inhuman to take the lives of people for minor violations, that too by public servants whose duty is to ensure public safety but they themselves adopt brutality and beat mercilessly the person who comes to the police station, instead of protecting them. It creates fear and affects the public in general which cannot be overlooked. It is a matter of public concern.

George Floyd Custodial Death 2020

The custodial violence is not only limited to India only but all around the world. In this case, a 46 years old African-American black man named George Floyd died in Minnesota. He was accused of using a forgery of a \$20 bill. Four police officers stopped his car and forcefully took him out of his car and he was forced to lie down on the road, a white cop named Derek Chauvin crouched on his neck for 9 min despite George's protest that 'I can't breathe', which resulted in his death. In this case, the Police Department fired all four of the officers who were involved and also added a serious second-degree murder charge against Derek Chauvin, and also charged the other three officers with abetting second-degree murder. After this incident, black people are demanding that the police department be completely dismantled, rather than just minor reforms within current systems. They have been chanting "I can't breathe" as they march through the streets in Floyd's honour. Thousands of white people began to demonstrate in support of the black community's call for "No Justice, No Peace". But what was the situation in India when the Father-son duo died? Can we anticipate the majority classes and governments in India providing the same support?

No, in India the situation is not the same, people who suffer from custodial violence are mostly from the lower class, they do not know much about their rights and the police officials take advantage of that. In India, whenever an incident of custodial death occurs, the government just shows sympathy towards the victim through Twitter, and after a few months, everyone forgets. That is the reason for increasing custodial violence day by day.

There is a need to take stringent action against those police officials, and to do so, the government will have to come up with proper law but it seems neither they are doing anything, nor they are serious about this issue.

The 1984-established United Nations Convention against Torture (UNCAT) entered into force in 1987, but India has not yet ratified it. The Indian government should ratify this convention but it is signed only. In order to prevent acts of torture [2] and help India address its issue with incarceration crime, India would have been required to implement efficient legislative, administrative, judicial, or other measures. It is impossible to disregard custody criminality, which is regarded as one of the cruellest types of human rights abuse. The main concern is that the cases of custodial death are increasing day by day despite various guidelines and laws on custodial crime. Both proper legal implementation and reforms of the police are required. The concept of custodial crime is not new, it has been continuing for a long time even after issuing guidelines regarding this.

The Supreme Court issued a list of 11 guidelines in the case "DK BASU VS STATE OF WEST BENGAL" (1997) CASE, in addition to statutory and constitutional provisions, that are to be followed in all cases of arrest and detention.

SOME IMPORTANT GUIDELINES OF THIS CASE

- Accurate and legible identification and name tags should be worn by police officers conducting the arrest or conducting the interrogation [3].
- The arresting officers must note the arrest in a memo at the time of the arrest [4].
- A person who has been detained or arrested and is being held in custody is entitled to know that he has been arrested at the specific location and will be inform to friend or a family member [4].
- The memo must contain all the details regarding the time and place of arrest; where the relatives of the arrestee live outside the town, then in this situation, legal aid organizations in the district and police station of the area must inform them telegraphically within 8–12 h after the arrest.
- The arrested person must be aware of his right to inform someone as soon as he is put under arrest.
- At the time of the arrest, the suspect should be examined, and any injuries to his body should be noted. The police officer and the person being arrested both need to sign the inspection memo [5].
- The Director of Health Services of the relevant state or union territory should conduct medical examinations of the arrested person every 48 h while he is being held [6].
- The Magistrate should receive copies of all the documents, including the memo of arrest [7].
- During questioning, the detained person must be given permission to speak with his or her attorney [6].
- All districts and states should have access to a police control room where information regarding the arrest and the location of detention must be communicated within 12 h of the arrest [4].

This case gave a landmark judgment regarding arrest and detention [4]. It protects all citizens by enforcing particular legal procedures that prohibit any infringement of an individual's right while in detention.

CUSTODIAL VIOLENCE AGAINST WOMEN

Custodial rape of female prisoners by prison officials is one of the worst forms of custodial violence. According to the Asian Centre for Human Rights, “custodial rape continues to be one of the worst forms of torture inflicted on women by members of the law enforcement community”. The main issue is that most of the females who are the victims are poor, illiterate, and belong to the lower class and the policemen take advantage of that by harassing them mentally and physically.

The incident of rape in police custody has brought attention to women's persecution at the hands of uniformed officers. They use their state's power and authority in a heinous and brutal way. Numerous instances of police brutality against women while they were being held in custody were exposed between the 1970s and 1980s [4].

In the Mathura Rape case (1972), Mathura, an Adivasi girl, was summoned to a Maharashtra Police Station for a general inquiry and instructed her to remain at the police station while her family members left. After that, two police officers raped her. There are a few more cases of custodial rape like the Maya Tyagi case and Rameeza Bee Case, and after these incidents, there was a demand for recognition of custodial rape as a separate offense. This sparked a number of legal reforms [7].

LEGAL REFORMS

- Section 114A of the Evidence Act, 1872 was added by the Criminal Law (Amendment) Act of 1983, which states that if sexual intercourse is proven and the victim claims it was done without her consent, the court will presume that she did not provide consent. The perpetrator then bears the burden of proving that the sexual encounter occurred with the women's consent [4].
- In 1983, the term custody was expanded and given a clearer meaning, and the punishment was increased to a minimum of 10 years rigorous imprisonment up to life imprisonment.

- If a police officer fails to file an FIR, a case can be filed against him and he would be held accountable for his actions. In *Lalita Kumari VS State of UP* (2013), the Supreme court held that it is mandatory for police officials to register proper FIR and maintain a general diary. In custodial rape cases, the government is gradually becoming more strict.

Even after all of these legal reforms, custodial violence persists. It is difficult to prosecute and punish police officers who commit custodial rape. Such incidents occur in police stations supervised by public servants. It is easier for them to destroy evidence from the scene of the crime. As a result, women face numerous challenges throughout the criminal justice process, particularly while in police custody. Custodial violence is a menace to our Indian society, and it has to be cut down.

CAUSES OF CUSTODIAL VIOLENCE IN INDIA

In India, there are numerous reasons for custodial violence:

- *Absence of strict legislation:* To prevent custodial violence, stringent and mandatory laws must be enacted. Custodial violence has yet to be criminalized in India so that policemen could not take the advantage of their power and authority. Custodial crimes are particularly severe as compared to other crimes since they indicate a public servant's abuse of custodial trust under custody. India does not have anti-torture legislation. Hence, it is imperative that laws and rules that will help to prevent such incidents be put in place as soon as possible.
- *Police punitive action:* Some police officers believe that punishing offenders is the only way to deter them from committing future crimes. They believe in the effectiveness of third-degree torture while dealing with criminals, especially those who have committed rape and murder but they need to understand that it is not the right way to treat and also it is not permitted by law to use these types of torture over prisoners.
- *Lack of proper training:* Due to a lack of sufficient training, such as knowledge on how to apply scientific methods in crime investigation and interrogation of suspects, which led to violence. Due to a lack of investigative expertise, the police frequently resort to using physical force against suspects in order to extract information and confessions. They must be trained in such a way that they respectfully interact with the public and avoid undue brutality and harassment. Human Rights education should be provided to police officers so that they can be motivated to preserve these rights.
- *No effective prison reforms:* India lacks effective prison reforms. The entire prison system is just opaque. There is no transparency in it. It needs to be changed. There are lots of problems that exist in prisons, like overcrowding, poor conditions, acute manpower shortage, and also limited safety against harm.
- *Work pressure:* Police officers are under a lot of stress since they have to deal with a lot of cases at the same time and are under pressure to finish a certain number of cases in a limited amount of time. In our legal system, an accused is deemed innocent until and unless he is proven guilty and in order to prove an accused guilty, needs evidence against him. Police are under a lot of pressure because failing to gather evidence could result in the officer being transferred, and as a result, they utilise torture on the accused to get information.

These are the main reasons due to which custodial violence occurs and there is a need of an hour that police officers must be trained in a specialized manner so that any kind of custodial violence can be prevented and for which proper reforms are necessary.

LEGAL PROVISIONS AGAINST CUSTODIAL VIOLENCE

The Indian constitution offers a number of protections from violence committed while in custody. According to Section 161 of the 1973 Code of Criminal Procedure, the police are permitted to question the suspect during an investigation. However, if the police applied any sort of coercion, whether subtle

or overt, mental or physical, direct or indirect in order to extract information from an accused person, this is called "compelled testimony" and it is a clear-cut violation of Article 20(3).

- No accused person may be coerced into testifying against him, according to Article 20(3) of the Indian Constitution. It protects the accused from coercion and torture when obtaining evidence from them.
- The Indian Evidence Act of 1872's Section 24 provides that any confessions made under coercion, fear, or promise are not admissible. It is well known that most of the confessions are made due to the torture of the police [4].
- Section 164(4) of the Code of Criminal Procedure, 1973, mandates the recording and signature of confessions, as well as a magistrate's confirmation that the confession was made voluntarily [4].
- A police officer is prohibited from holding prisoners against their will in order to extract a confession or information, according to Section 348 of the Indian Penal Code, 1860. Wrongful detention is a crime punishable by up to 3 years and also liable for a fine.
- The right to life and personal liberty is discussed in Article 21 of the Indian Constitution. It does not say anything against custodial violence or torture expressly. According to this right, no one's life or personal freedom can be taken away from them before they have complied with the legal requirements. The right serves as a defence against violence and torture committed when a person is being held captive since it contains a constitutional guarantee against torture, assault, or harm [4].
- Section 50A of the Code of Criminal Procedure, 1973 mandates that the police inform the arrested person's family or any other person of their choice of the arrestee's identity and the location of the arrest.
- The criminal legislation (Amendment) Act, 1983 added a new section 376(2) to the Indian penal code, amending section 376 to particularly address rape in detention. The minimum sentence for raping a woman while she is in custody by a police officer, a public servant, or a member of the staff of a correctional facility has been raised to 10 years [4].

RIGHTS OF AN ARRESTED PERSON [8]

- The Indian constitution's Article 22(1) stipulates that no police official may detain or arrest a person without first telling him of the reason for the arrest or custody.
- The right to be produced before a magistrate is outlined in Article 22(2) of the Indian Constitution, which requires police officers to do so within 24 h of the arrest. They would be held accountable for wrongful detention if they did not in such situation.
- Right to contact a lawyer: According to Article 22(1) of the Indian Constitution, anyone detained has the right to speak with their attorney in order to represent themselves in court.
- The right to know the details of the bail, Section 50(2) of the Criminal Procedure Code states that when a police officer arrests someone without a warrant for any reason other than for a crime that is not subject to bail, he or she must inform that person that they have the right to be released. This is helpful for those who are not aware of their right to be released on bail for crimes that are subject to bail.

Due to a large number of custodial deaths in India, the legislature and the judiciary both have framed various mechanisms to deal with this issue from time to time. In addition to all of these laws and regulations, the National Human Rights Commission has also established rules that must be adhered to in the event of a death while under custody.

The National Human Rights Commission was established in 1993 and is crucial to defending and advancing human rights. As we know that custodial violence is the biggest threat to human rights and dignity, so here, NHRC came into the picture and issued guidelines.

Within 24 h, all such custodial deaths must be notified to the National Human Right Commission. The guidelines also stipulate that where there is a suspicion of foul play, the post-mortem must be video

recorded, as the post-mortem report becomes a crucial report in all the cases of custodial death. All findings, including post-mortems, video graph, and magisterial investigation reports, must be provided within 2 months after the incident to the commission.

In 2017, the Supreme Court said that the involvement of NHRC is crucial in custodial deaths. However, the guidelines sent by the commission are not being taken and followed seriously. The Supreme Court has also ordered that CCTV cameras be installed in all police stations and investigative organisations. This was done in order to reduce the cases of custodial violence and death but this is not being followed. Despite all these rules, legislation, and guidelines, the law is not being followed, and it exists on paper only.

CONCLUSION AND RECOMMENDATION

Police are considered as public servants and their work is to maintain law and order in society. But what is happening is that police officers themselves are involved in breaking the law and order and infringe the human rights of prisoners who are under their custody by using force on them which leads to death. India is a democratic country and governed by its constitution which guarantees the right to life and personal liberty in general, as well as for those who are in custody. The fact that custodial violence has jeopardised human rights, is one of its most significant issues. Nowadays the cases of custodial crime are increasing despite all such laws and provisions because somewhere there is a problem in the mindset of police officials which needs to be changed. It is totally wrong to think that they have the power to arrest the offender as well as to punish them. They take the advantage of their power and use it in the wrong way; this is reality, not a movie where policemen kill the offender and the public praises it. The prisoners who had been arrested and died during custody have not been given any chance to prove themselves, and this is inhumane. Police have been given the power to protect the public and they are using it against the public by taking undue advantage of that.

Kasganj custodial death 2021; this is a recent case that is still pending and yet to be decided by the court. In this case, a 22-year-old man named Altaf was detained by UP police and he was charged with kidnapping a 16-year-old minor girl; later it was disclosed that she is 19 years old. He was found dead at the police station, and according to the police officials, that was not possible as he went to the bathroom after seeking permission and hung himself from a tap which was just two feet above the ground.

There have been lots of changes, amendments, and reforms in laws; still the incidence of custodial violence, torture, and death is increasing. The main reason is that all the rules exist on paper only. There is a need to properly implement those laws and also take stringent action against those police officials.

The Law Commission of India's 273rd report, which recommends that police officers suspected of torturing detainees should face criminal charges rather than merely administrative action, must be put into effect as soon as possible. Implementation of all such laws in a proper way is important to prohibit custodial violence. It is extremely important to change the mindset of police officers and provide them with proper training in such a way that they start working according to the rules and regulations. The United Nations Convention against Torture (UNCAT), which necessitates a full analysis of colonial procedures, practises, and arrangements for the custody and treatment of persons who have been arrested, detained, or imprisoned, should be ratified by India first and foremost.

REFERENCES

1. Tamil Nadu: SC Declines Bail to Two Cops in Sathankulam Custodial Death Case [Internet]. The Wire. 2018 [cited 2023 Jan 11]. Available from: <https://thewire.in/law/tamil-nadu-sc-declines-bail-to-two-cops-in-sathankulam-custodial-death-case>
2. Icrc.org. 2023 [cited 2023 Jan 11]. Available from: <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule90>

3. Legal L. Custodial Death in India- When our saviour becomes a slayer! - LexForti [Internet]. LexForti. LexForti; 2020 [cited 2023 Jan 11]. Available from: <https://lexforti.com/legal-news/custodial-death-in-india/>
4. Verma A. Custodial death and anti-torture law - iPleaders [Internet]. iPleaders. 2021 [cited 2023 Jan 11]. Available from: <https://blog.ipleaders.in/custodial-death-anti-torture-law/>
5. Rai D. What are the Rights of an Arrested Person in India? [Internet]. iPleaders. 2019 [cited 2023 Jan 11]. Available from: <https://blog.ipleaders.in/rights-of-an-arrested-person/>
6. Kumar A. Lawtimesjournal.in. 2020 [cited 2023 Jan 11]. Available from: <https://lawtimesjournal.in/d-k-basu-vs-state-of-west-bengal/>
7. Custodial Rapes [Internet]. Legalserviceindia.com. 2017 [cited 2023 Jan 11]. Available from: <https://ftp.legalserviceindia.com/legal/article-6337-custodial-rapes.html>
8. Helplinelaw. Rights of an Arrested Person in India - Helplinelaw.com [Internet]. Helplinelaw.com. 2022 [cited 2023 Jan 11]. Available from: <https://www.helplinelaw.com/employment-criminal-and-labour/RAPI/rights-of-an-arrested-person-in-india.html>