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FROM PROTECTION TO PERSECUTION: HOW POLICE BRUTALITY FUELS CUSTODIAL DEATHS IN INDIA

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Abstract

A coin holding two faces one where the accused is guaranteed by our constitution, which always upholds the principle of equality and protection of our rights, and Audi Alteram Partem: "Let the other side be heard as well."

The maxim "Praesumptio Innocentiae" - where the accused is presumed innocent until proven guilty . But on the other hand, the reality often deviates. Many under-trial prisoners face harsh treatment in jails and police custody. Whether be it due to the overburden of cases, political agenda, or else the systematic flaws. India has witnessed an alarming rise in custodial deaths over recent years, revealing a disturbing pattern of police brutality and institutional failure.

BUT THE QUESTION IS: who gives this power to police to be held accountable like a convict to any person who is just even held for interrogation? Where goes away the Doctrine of fair trial and due process? Tragic data of 4,484 cases of custodial deaths were reported in India by the Union Minister of State for Home Affairs Nityanand Rai in the year 2020-21, and 2021-22. The persistent occurrence of deaths within police and judicial custody represents a grave challenge to human rights and the rule of law in the country.

Drawing from government data, individual research, case studies, and various judicial pronouncements, this analysis reveals not only the statically gravity of the situation but also its underlying causes, systematic failures, and the urgency for reforms in India's criminal justice system.

Keywords: custodial death, police brutality, abuse of power, custodial violence, failure of human rights.

Custodial Deaths in India: A Legal Paradox Between Justice and Immunity

Defining Custodial Death?

Custodial death refers to the death of a person while being in the custody of law enforcement officials. It is the death of a person occurring during custody, directly or indirectly caused by and substantially attributable to acts committed upon the deceased while in custody. It can be the death of an accused during pre-trial or after conviction and includes death not only occurring in jail but in medical or private premises or with the police. The historical trajectory of custodial deaths in India points to a persistent and worsening problem. According to the data released by the Ministry of Home Affairs, the number of deaths in police custody has witnessed a nearly 60% increase over the last three years and 75% over the last two years across the country.

The concept of custodial death emerged from the idea of protection of individual rights, the brutality the cruelty that individuals face is something that infringes on their various rights, there are human rights violations it also takes away various rights that which constitution grants them and the law governing bodies itself curtails it and this is the form of abuse of power because these death are seen so common by giving them the name of health issues natural death, suicides but is it just the reason behind various custodial deaths? Where some cases are still underreported while the rest are portrayed with the story of natural causes but what's that untold story behind it? This stands as a major issue!!

BACKGROUND

This can be traced back to the ancient times when during British rule in India, law enforcement agencies used brutal methods, leading to frequent deaths in custody.

The Police Act of 1861 created a colonial-style policing system, which was often unaccountable.

Post-Independence Article 21- The right to life and personal liberty became a safeguard against arbitrary state action. Article 22- Provided rights to arrested persons, limiting arbitrary detention. The Supreme Court of India began actively interpreting custodial deaths as violations of fundamental rights.

THE RECENT DATA ANALYSIS OF CUSTODIAL DEATHS

Recent data indicates a troubling trend in such incidents. The custodial death statistics for the financial years 2020–21 and 2021–22.

National Overview:

According to data presented in the Lok Sabha, India reported a total of 4,484 custodial deaths over two years.

State-Specific Data:

Uttar Pradesh: Reported 952 custodial deaths over the two years.

West Bengal: Recorded 442 custodial deaths during the same timeframe.

More recent statistics from the National Human Rights Commission (NHRC) paint an equally troubling picture. For the financial year 2021-2022, the NHRC reported 2,152 deaths in judicial custody and 155 deaths in police custody until February 28, 2022. These figures represent a significant increase from previous years, indicating a worsening situation rather than improvement.

The Union Minister of State for Home Affairs Nityanand Rai revealed in the Lok Sabha that 4,484 cases of custodial deaths were reported in India during the period from 2020-2021 to 2021-22, further confirming the scale of this crisis.

So now, the question that arises after looking at this data analysis is that are these deaths a reason for a natural cause. And if not then what is the reason behind it? The number of persons included in each statistical data carries an infringement of thousands of rights and deaths of thousands of lives.

Is just being held for interrogation & suspect indicates that the person will be the accused why are they not dealt with human sense why do they need to face brutality, torture, excessive use of force, denial of medical care, and fake encounters?

NOW LET'S UNDERSTAND WHAT THE TYPES OF CUSTODIAL DEATH IN INDIA ARE

Broadly, the custodial deaths are covered in three major types:

Police custody

A police custody refers where a person dies while in the custody of the police before being presented in court. The police officer has the time of 24 hours to interrogate the suspect and if he finds that the suspect is guilty then the duty of the police is to file a charge sheet after taking him to the Magistrate, failing which, will violate the right of an accused police custody.

The common causes can be :

- ✓ Police brutality & torture during interrogation.
- ✓ Excessive use of force (beatings, third-degree methods).
- ✓ Denial of medical care for pre-existing conditions or injuries.
- ✓ Suicide due to fear, torture, or mistreatment.
- ✓ Medical neglect or lack of access to basic needs.
- ✓ Fake encounters (extrajudicial killings disguised as self-defense cases).

Judicial custody

It refers to when a person dies inside prison/jail after being remanded by a court. The person is under the supervision of the court, rather than the police. After the initial police custody period (maximum 15 days as per BNSS, 2023), if further detention is needed, the court may send the accused to judicial custody.

The common causes can be:

Torture & custodial violence

Poor living condition

Lack of healthcare and medical negligence

Delayed legal process

Inter-prisoner violence

Death in other forms

POLICE ITS POWER AND THE AMBIT OF ITS MISUSE

The term "Police" refers to a law enforcement agency responsible for maintaining public order, preventing and investigating crimes, and ensuring the enforcement of laws. The police are entrusted with the crucial responsibility of maintaining public order, preventing and investigating crimes, and upholding the law. Police power is a fundamental concept in governmental authority, essential for maintaining order and ensuring public welfare. It refers to the capacity of government entities, primarily at the state and local levels, to regulate behavior within their jurisdiction to promote health, safety, morals, and general well-being. Their role extends to protecting individual rights, ensuring liberty and dignity, and safeguarding citizens. However, the very authority granted to them—along with certain rights and privileges—can sometimes lead to misuse, creating a system where justice is denied instead

of delivered. Due to being Overburdened with cases and delayed investigations, they often take shortcuts, arresting innocent individuals, imposing false charges, and subjecting them to brutal conditions to force making false confessions. In many instances, corruption further fuels this injustice, as political leaders influence police actions by bribing them to target specific individuals.

Custodial violence is a grave issue, particularly when individuals are arrested, falsely charged, and subjected to inhumane treatment. Many of these individuals are merely suspects, yet they are treated as if they are already convicted criminals. This raises a fundamental question: Who grants the police the right to treat innocent people as guilty before any trial?

The use of third-degree torture—where suspects face extreme physical and psychological abuse during interrogation—is not only unacceptable but also a blatant violation of human rights. Such practices undermine the principles of justice, allowing the police to wield unchecked power, disregarding due process and legal fairness.

Women in custody are especially vulnerable, as false allegations, physical abuse, and even custodial rape occur under the guise of law enforcement. In many instances, their deaths are hastily labeled as suicides, raising serious doubts about whether these individuals took their own lives voluntarily or were coerced into it when left with no other option. The systemic failure to investigate the real causes behind these so-called suicides only perpetuates police brutality and the culture of impunity.

According to Section 58 of the Model Police Act, 2006 there roles and responsibilities are been defined as:

"Every police officer shall:

Behave with the members of the public with due courtesy and decorum, particularly so in dealing with senior citizens, women, and children;

Guide and assist members of the public, particularly senior citizens, women, children, the poor, and physically or mentally challenged individuals, who are found in helpless conditions on the streets or other public places or otherwise need help and protection;

Provide all requisite assistance to victims of crime and of road accidents, and in particular ensure that they are given prompt medical aid, irrespective of medico-legal formalities, and facilitate their compensation and other legal claims;

Ensure that in all situations, especially during conflict between communities, classes, castes,

and political groups, the conduct of the police is always governed by the principles of impartiality and human rights norms, with special attention to the protection of weaker sections including minorities;

Prevent harassment of women and children in public places and public transport, including stalking, making objectionable gestures, signs, remarks, or harassment caused in any way;

Render all requisite assistance to the members of the public, particularly women, children, and poor persons, against criminal exploitation by any person or organized group; and

Arrange for legally permissible sustenance and shelter to every person in custody and make known to all such persons provisions of legal aid schemes available from the Government and also inform the authorities concerned in this regard."

Section 58 of the Model Police Act

Section 58 of the Model Police Act, 2006, deals with "Deaths in Police Custody" and establishes the requirement for mandatory reporting and investigation to ensure accountability and transparency.

The main provisions of this act are as follows:

Mandatory Reporting:

Every case that has resulted in death in police custody must be reported immediately to the nearest magistrate and an independent investigating agency.

A detailed report must be submitted, specifying and mentioning the circumstances that have led to the death.

Judicial Inquiry:

The act talks about a mandatory judicial or magisterial inquiry that must be conducted into all custodial deaths.

It should be transparent that the findings of the inquiry should be made public.

Post-Mortem and Videography:

Post-mortem needs to be done: A post-mortem examination is compulsory in all custodial death cases.

For the prevention of manipulation of evidence, the process must be videographed.

Accountability of Police Officers:

If negligence or foul play is suspected in the case, criminal proceedings must be initiated against the responsible police officers.

Officers involved in custodial deaths may face disciplinary action, suspension, or criminal charges, depending on the findings.

Compensation for Victims' Families:

The government must provide compensation to the family of the deceased in case of proven police misconduct.

LETS TALK ABOUT THE SIGNIFICANCE OF SECTION 58

It Prevents custodial torture and extra-judicial killings.

It Ensures police accountability and discourages misuse of power.

Protects human rights and upholds the rule of law.

Provides justice to victims and their families.

THE MISUSE OF POWER

Threatening the accused for confession

The under-trial accused many times is forced to accept certain things and crimes which are even not committed them. The main targets are the accused who are vulnerable and are individuals from disadvantaged backgrounds because of their vulnerability they don't understand their basic rights and they often lack legal representatives. These have been taken as an advantage by the police officials to coercion.

And just not as the individual belongs to the weaker section of society police often use psychological manipulation to get confessions.

Brutally beating innocent people: Police often use disproportionate force in involves the application of force that exceeds what is been necessary to control a situation or to apprehend a suspect during arrests and interrogations because of the lack of accountability this leads to severe injury or death.

Third – Degree torture: It refers to the use of extreme excessive force which includes both physical and mental methods to extract information, and confessions that often run out the normal human conditions it goes beyond legal or humane boundaries.

Talking about jail it includes brutal techniques like beating using rods, belts, or wooden sticks to inflict pain, using electronic shocks, falanga, forced postures, waterboarding, burning, sexual violence, etc.

Cases like: The death of Sonu (2006) in Uttar Pradesh, a 26-year-old man was illegally detained

by police officers and was subjected to custodial torture. The Delhi High Court upheld the conviction of five police officers involved, emphasizing the gravity of custodial death.

SALMAN KHAN'S CASE (2021) was held in Karnataka where the youth was illegally detained and was subject to extreme torture, resulting in the amputation of his arms. Three police officers were suspended.

SEXUAL HARASSMENT AND CUSTODIAL DEATH

Sexual harassment in jail refers to the condition where the woman faces unwelcome physical, verbal, or non-verbal and forced conduct which is sexual by prison staff police officials, or else any law enforcement officers, and denial to that oracle stigma created by that leads to the death of many prisoners.

The verbal abuse, unwanted touching, voyeurism, denial of basic rights they use to force the fulfillment of the sexual demands in return for food, medical care, etc

For many women, the regular harassment and also denial to take false confessions leads to the worsening of their condition through sexual activities and custodial rape leads to stigma and shame, and torture and results in suicides and custodial deaths.

The THANGJAM MANORAMA CASE (2004): in Manipur, allegations of being associated with insurgent groups. Her body was found with multiple gunshot wounds and signs suggestive of sexual assault.

NODEEP KAUR CASE (2021): she was a labor rights activist, she was arrested in 2021 during a protest in Haryana. Although she survived she was beaten and sexually assaulted while in police custody.

THE FAKE CASES: This are the wrongful allegations which are imposed on an innocent individual and their various human rights are violated.

The KUPPUSWAMY'S DEATH CASE (2016): he was a small shop owner in Tamilnadu and was arrested allegedly selling illegal liquor. He was died the same day in Madurai Prison. His family members claimed that he died due to illness and was falsely charged and protested

outside the sanarpatti police station.

AKASH SINGH'S DEATH (2024): A 28-year-old Dalit man from Uttar Pradesh was arrested for motorcycle theft. He died in the police custody itself and his post-mortem revealed antemortem head injuries. His family accused the police of fabricating the charges and torturing him.

And like these are many ways how police misuses their power because of lack of accountability as officers act without the fear of repercussions for their actions .

Because there start happening a systematic corruption and due to this vary corruption happens an abuse of power, where the officers often priotize personal gain or corrupt practices over justice.

LANDMARK CASE BASED ON ARREST AND DETENTION

D.K BASU Vs STATE OF WEST BENGAL (1997)

The Background of the case:

D.K Basu is the executive chairman of Legal Aid Services which belongs to West Bengal.

In 1986 he wrote a letter to the Supreme Court regarding the increased custodial deaths he highlighted the various incidents of custodial deaths and police brutality. The Court treated it as Public Interest Litigation PIL and the court combined this letter with one of the other cases which was filed by Ashok K. Johri, who had also raised the concerns over the deaths of a person in police custody.

OBSERVATION

The Supreme Court recognized custodial violence as a gross violation of human rights and it also laid down the guidelines that should be followed to prevent police brutality and their illegal detention with various kinds of custodial torture.

The court observed that custodial torture is the worst form of human rights violation.

The police cannot use force or any kind of third-degree methods to extract the confessions.

And just arresting a person does not give them overall unchecked authority over them.

Every individual, whether a criminal or not, has the right to dignity and protection from inhumane treatment.

In this case, the following guidelines were laid down by the Court:

The police personnel should bear accurate, visible, and clear identification and name tags with their designations. The particulars of all such police personnel who handle the interrogation of the arrestee must be recorded in a register.

An arrest memo shall be prepared by police officer making an arrest which shall be attested by atleast one witness (a family member or respected person of the locality where arrest is made). It shall also be counter-signed by the arrestee and shall contain the time and date of arrest.

The arrested person shall be entitled to have one friend, relative, or other person known to him or having an interest in his welfare being informed about his detention or arrest.

The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or detained.

An entry must be made in the diary mentioning the name of the next friend who has been informed about the arrest.

The arrestee should, where he so requests, also be examined at the time of his arrest and an "Inspection Memo" shall be prepared and signed both by the arrestee and the police officer effecting the arrest and its copy must be provided to the arrestee.

The arrestee should be subjected to a medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors.

Copies of all the documents including the memo of arrest, as mentioned above, should be sent to the 'illaqa' Magistrate for his record.

The arrestee may be permitted to meet his lawyer during interrogation, though not throughout

the interrogation.

A Police Control Room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

THE THINGS WHICH SHOULD BE FOCUSED AND SHOULD BE LOOKED UPON ARE:
STRONGER IMPLEMENTATION OF EXISTING LAWS: some laws and guidelines are already made under BNS, BNSS, CPC, police act & various supreme court precedents but the main point is regarding their implementation why are these laws not been followed and implemented properly? There needs to be an independent body that looks after its regular implementation from the ground level. Making more & more laws and with zero or no implementation doesn't even create any sense of making any further new laws.

Independent Police Complaints Authorities: there needs to be a body that is accountable for any act which is been committed by the police officials and if they do any kind of misconduct or abuse of power, then there needs to be an authority to look after the complaints and where the individuals without any fear and hesitation express everything and where it is confidential the guidelines for its implementation was also mentioned under the case law of PRAKASH SINGH VS UNION OF INDIA (2006).

Separate investigation : There is a need of body where all the suspected accused or else anyone who is kept for inquiry and trial needs to be kept separate from that of police custody, because there are so high chances of misusing any of the innocent individual for false witness or else fake statements and fake encounters.

Monitoring: There need to be strict monitoring of every acts which is been conducted by the police official under the station and in every part & location of it. A CCTV surveillance in station to record all the acts and even to see how they keep the prisoners and how they treat them. There is the famous case law of Paramvir Singh Saini v. Baljit Singh & Others (2020) which deals with CCTV monitoring in police station.

Background of the Case

The case of *Paramvir Singh Saini v. Baljit Singh & Others* (2020) focused on CCTV surveillance in police stations and other law enforcement agencies to prevent custodial torture and human rights violations.

The petitioner, Paramvir Singh Saini, filed a plea seeking the installation of CCTV cameras in all police stations and interrogation rooms to ensure transparency and accountability.

The petition highlighted that despite the Supreme Court's 2018 directive for installing CCTV cameras in police stations, implementation was poor.

Key Issues Before the Court

Whether CCTV surveillance in police stations is necessary to prevent custodial violence and protect fundamental rights.

All central and state investigative agencies should also install CCTV cameras for greater transparency.

How the recorded CCTV footage should be stored and accessed for legal and human rights purposes.

Supreme Court Judgment & Directives (December 2, 2020)

The Supreme Court of India, in its ruling, issued the following key directives:

Mandatory CCTV Installation in All Police Stations

All police stations across India must install CCTV cameras with night vision.

Cameras must be placed in areas like interrogation rooms, lock-ups, and entrances/exits to ensure full monitoring.

Extension to Central and State Agencies

Apart from police stations, CCTV cameras must also be installed in all central agencies involved in interrogations, including:

Central Bureau of Investigation (CBI)

National Investigation Agency (NIA)

Enforcement Directorate (ED)

Narcotics Control Bureau (NCB)

Serious Fraud Investigation Office (SFIO)

Any other agency involved in arrests and interrogations

Storage and Access to Footage

CCTV footage must be stored for a minimum of 18 months to ensure that victims of custodial torture or wrongful arrests can access it for legal action.

If any individual files a complaint of police misconduct, authorities must provide access to the

CCTV recordings.

Accountability for Non-Compliance

If CCTV cameras are not installed or not functioning, concerned police officers will be held accountable.

State and Union Governments must ensure compliance with these directives and submit reports to the Court.

Significance of the Judgment

Strengthens transparency and accountability in police investigations.

Provides evidence in cases of custodial violence, wrongful arrests, and forced confessions.

Ensures protection of fundamental rights under Article 21 (Right to Life and Personal Liberty).

Creates a deterrent effect against police brutality and misconduct.

Punishments for police officers: if the act of police is found guilty like in the case of KUPPUSWAMY'S DEATH CASE, AKASH SINGH'S DEATH (2024), etc then strict action should be taken against them. And imposition of rigorous punishment needs to be given without any delay. It will set an example to not repeat the same act to be within the legal boundaries and to maintain decorum and abide by the law to follow the proper rules of investigation and interrogation, trial, and investigation.

Magistrate inquiry: whenever a case is pronounced with the name of custodial death then it should be the firsthand work of higher authorities and magistrate to look into it and find the main reason behind it and is a system failure or else failure to abide with the laws each and everything should be taken into account by the magistrate. There should be a stronger legal framework to ensure that every custodial death is automatically investigated by a judicial magistrate, leaving no room for cover-ups. It needs to be assured that every custodial death must be immediately reported to the nearest Judicial Magistrate. A magisterial inquiry must be compulsory, regardless of whether the police claim it was suicide, natural death, or other causes.

It need to be the accountability of the higher authorities and they need to be held responsible if any act of police has resulted in custodial death.

CONCLUSION

Custodial death has become a major issue. The statistics presented by NHRC and NCRB reflect the horrifying numbers of custodial deaths. Strict monitoring is needed against the police actions, especially in the case of custodial death happening due to malafide intentions. Stringent legal action is solely dedicated to punishing the personnel who misused and has led to the

various persons or personnel who misused have greatly misused their power. It needs to be resolved and strict laws should be implemented. Custodial deaths are a severe violation of human rights and undermine the fundamental principles of justice.

The misuse of police power, including third-degree torture, illegal detentions, and fabricated charges, has led to unlawful deaths in custody our constitution always stands as the protector of our rights and as a guardian and these are some acts that stand as a setback for our society and law enforcing system. And police which is considered as the executive body needs to be the protector & guarantor of individual rights. These deaths are hastily labeled as suicides, raising serious doubts about whether these individuals took their own lives voluntarily or were coerced into it when left with no other option. The systemic failure to investigate the real causes behind these so-called suicides only perpetuates police brutality and the culture of impunity. The laws and legislation need to be regulated and these flaws and proper implementation will result in healthy and proper human rights protection of the individual and the rights of the accused as it has always been presumed innocent until proven guilty. The interrogation and trial will even result in a follow-up with the Constitution. Whistleblower protection laws to encourage honest police officers to report misconduct within the system Stronger implementation, separate investigation, accountability should be the maintained and should be the main focus to avoid abuse of power.

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