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# **The Biggest Lie: Maintenance Of Law And Order & Protection Of Human Rights By Police**

Author: Nikchen Tamang & Nitesh Tamang

## **Introduction**

It may sound paradoxical, but it is a universal phenomenon that Police have been criticized and condemned for committing acts contrary to what duties have been conferred to them. As law enforcement officers, they have the fundamental responsibility to serve humanity, safeguard lives and property, protect innocent from deception and respect the constitutional rights of all people to liberty, equality and justice.<sup>1</sup> However, the reality is precisely contrary to it. It is not surprising to hear daily news that the Police oppress the weak, destroy their property and torture their fellow beings. Indeed, the most unfortunate is brutal torture in police custody. Third-degree suffering and custodial deaths have become an intrinsic part of Police Investigation. While discussing one of the heinous crimes, “Custodial death”, India can’t be left out. In July 2022 Home Ministry reported to Lok Sabha a total of 4,484 deaths in Police custody and 233 in alleged police encounters in the last two years only.<sup>2</sup> It is shameful for the largest democratic country like India, where the rule of law also governs society and the land, where personalities like Buddha and Mahatma are used to spread the message of non-violence. Custodial death (referred to as the death of a person who is under trial or has already been convicted of a crime) is the most significant violation of human rights and the most brutal and heinous form of human rights abuse. It is a vicious attack on the right to life and liberty guaranteed by the Constitution of India. Though, the authorities such as The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC) and the United Nations prohibit it.<sup>3</sup> But the officials all over the country disobey these institutions,<sup>4</sup> and our bureaucrats are sent abroad to lie to cover up torture, rape death in

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<sup>1</sup> Nirman Arora, Custodial Torture In Police Stations In India: A Radical Assessment, 41 JILI, 513, (1999).

<sup>2</sup> Isha Sahai Bhatnagar, 4484 Custodial deaths in last two years UP top charts: Centre, The Hindustan Times, Jul. 27, 2022, <https://www.hindustantimes.com/india-news/4484-custodial-deaths-in-past-two-years-up-tops-chart-centre-101658862858478.html>.

<sup>3</sup> Aashima Garg, Position of Custodial Deaths in India: A Critical Analysis, 4 INT’L J.L.MGMT. & HUMAN. 1155 (2021).

<sup>4</sup> See *Id.*

police custody for the good of India.<sup>5</sup> Ironically, the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966, proclaimed "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment" for safeguarding fundamental human rights to which India voted and was a party. However, the biggest question is how much India itself practices it.<sup>6</sup> The present study will provide the various aspects of custodial torture and police atrocities and strive to grapple with loopholes in International and domestic legal frameworks with increasing custodial death in India, besides discussing the role of the Indian judiciary in preventing and safeguarding fundamental human rights against torture.

## Atrocities Of Police And Custodial Death

In the past few years, custodial death has been increasing at an alarming rate. The atrocities of Police in custody and torturing prisoners, whether physical, mental or psychological, to induce them to make confessions are very common these days. Putting a person behind bars doesn't deprive him of fundamental human rights. And therefore, the Supreme Court time and again laid down in its judgment that carrying out wrongdoing and being a detainee doesn't deprive an individual of being a human being.<sup>7</sup> However, these guidelines have not yielded anything as they are brazenly ignored by officials all over the country. The atrocities of Police and custodial deaths are rising, and such cases are not rare in the country. In November 2021, a twenty-year-old man was found dead in Police Custody in Kasganj, where Police claimed he died by suicide.<sup>8</sup> More recently, in April this year, it was reported that a Muslim man, Rehan Shah, was brutally assaulted and tortured by giving electric shock by Police.<sup>9</sup> Torturing the commoner by making false allegations became the daily routine of Police all over the country. Another instance of Custodial torture came to light from Rampur District, where the father-son duo were illegally detained by Police and treated brutally during detention on the pretext of interrogation.<sup>10</sup> It is difficult to imagine any police station

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<sup>5</sup> Death in Custody, 27 EPW, 551, (1992).

<sup>6</sup> Jitendra Mishra, Custodial Atrocities, Human Rights And The Judiciary, 47 JILI 508, 508-521 (2005).

<sup>7</sup> Death in Police Custody, 14 EPW, 1831, (1979).

<sup>8</sup> Sumedha Pal, Behind India's Custodial Death Numbers Are 'Brazenly Ignored' Guidelines, Say Experts, The wire, Jul. 28, 2022, <https://thewire.in/rights/custodial-death-uttar-pradesh>.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.*

in India where the Police have not used brutal and barbaric methods while treating the persons in their custody.<sup>11</sup> Greed for money is the most disdainful explanation behind custodial torture. It has been seen that there are police officers who use mercilessness to extricate cash from suspects and blame people.<sup>12</sup> Also, torture is used as a mechanism to threaten and demand bribes from the relatives and family members of the accused. One study ordered by the Supreme Court regarding Haryana Prisons also revealed extreme forms of torture such as giving an electric shock, depriving them of sleep, harming sexual parts, etc. The condition of prisons in other parts of the country is no more different. One report about the Torture of Political Prisoners in India has pointed out some forms of physical torture such as (a) Stamping on the bare body with heeled boots. (b) Beating with canes on the bare soles of feet. (c) Rolling a heavy stick on the shins, a policeman sits on it. (d) Making the victim crouch for hours in a 'Z' position. (e) Beating on the spine. (f) Beating with a rifle butt. (g) Slapping with cupped hands on both ears until the victim bleeds and loses consciousness. Besides these torture methods, there are other forms of brutalities and atrocities committed by our Police. Some of them are inhuman and barbaric.<sup>13</sup> Moreover, sexual harassment of women to the extent of rape has become a common form of torture. In 2016 -17 NHRC reported 4,851 custodial deaths,<sup>14</sup> and this number has been rising at a speedy mode yearly. Asian Centre for Human Rights, in its report of 2017 -18, stated the aggregate of 1,674 custodial deaths.<sup>15</sup> Sadly, many cases aren't reported, and those noted haven't also yielded any relief to the victim. How many Police get convicted and held guilty of custodial death? By using their power, money, and political connection, they get out of it. In 2019, NHRC reported 1,723 cases of custodial death; in 2020-2021, it reported 4,484 custodial death and 233 in alleged police encounters.<sup>16</sup> The statistics of the reports show that we're moving towards jungle Raj. In a democratic country, power is primarily conferred upon the Police to deal with ordinary people. And hence it is essential to regulate and direct this power righteously.

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<sup>11</sup> Arora, *Supra* note 1, at 514.

<sup>12</sup> Akash Khan & Rajeshwari Singh, Custodial Death and Judicial Response in India, 3 INT'L J.L. MGMT. & HUMAN. 1733 (2020).

<sup>13</sup> Arora, *Supra* note 1, at 518.

<sup>14</sup> NHRC, India, Ann. Rep. 2016-2017 at 39 (2017).

<sup>15</sup> ACHR, Rep. 2017-2018.

<sup>16</sup> *Supra* note 2.

*The causes behind Police atrocities*

India is one of the largest democracies in the world and has always paid tremendous respect to human rights. We have also adopted these rights in our Constitution and later on their recognition of these rights by being a part of the Universal Declaration of Human Rights 1948, a State party to the International Covenant on Civil and Political Rights 1966 and most importantly, through the acceptance of the International Covenant on Economic Social and Cultural Rights.<sup>17</sup> It shows India's national and international commitment in respect of human rights. Nevertheless, the ground reality is far from what India has demonstrated in International Sphere. The increasing police atrocities have shaken the faith of people in the democratic system of the country. Uncovering the cause behind the custodial torture is essential to tackle the situation. Various reasons paved the way for the atrocities of the Police resulting in custodial brutality, torture and deaths. Blaming the Police for the increasing crime rate in a society over which they have no control is the prevalent notion in the community. They are overloaded with work and ill-equipped in terms of resources to work. Despite these constraints, they are pressured by politicians and bureaucrats to detect criminals and solve the cases quickly. In such circumstances, it has been seen that Police, instead of finding real criminals, induce poor people by using the third degree to confess a crime that hasn't been committed.<sup>18</sup> They even threaten their family or relatives to extract money. Immense importance should be given to the FIR in the eyes of the law as the Police entirely frame it.<sup>19</sup> Our Constitutional makers have impliedly included the concept of Rule of Law to tackle arbitrary power and arbitrariness. However, the Police enjoy such broad discretionary power, leaving huge room for arbitrariness. There are many loopholes in our Indian legal system. As per our country's legal system, while a case is being recorded in the police diary, it is mandatory to present it in a court of law. To produce better results, it has often been seen that the police authorities make illegal arrests or unlawful detention of people to establish the facts in favour of the prosecution.<sup>20</sup> Besides, India doesn't have a separate comprehensive anti-torture law. Hence, the Police find themselves immune to whatever they do.<sup>21</sup> Third-degree torture has been a matter of their right while investigating. The inadequate training,

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<sup>17</sup> N.S. Kamboj, *Police Custodial Death: A Growing Abuse To Human Rights In India*, 36 JILI, 372-377 (1994).

<sup>18</sup> Mishra, *Supra* note 6, at 511.

<sup>19</sup> Khan & Singh, *INT'L J.L. MGMT. & HUMAN.*, *Supra* note 12, at 1735.

<sup>20</sup> *Supra* note 12, at 1736.

<sup>21</sup> Garg, *Supra* note 3, at 1157.

lack of knowledge and experience in scientific interrogation of the accused, lack of supervision by superior officers and poor pay scale have resulted in custodial brutality and atrocity. It is not only because of official negligence but because of incompatible demands and expectations of the society to take strict action not sanctioned by law.<sup>22</sup>

*Does the Indian legal framework comply with the international legal framework?*

Abuse related to human rights is the most sensational issue all over the globe. Amongst them, Custodial torture and death have been considered the most brutal act against humankind as it constitutes the very denial of the essence of human rights. Though every state has its way of preventing human right abuse, as far as custodial deaths are concerned, there are various international frameworks, treaties and conventions that have recognized and dealt with the issue of custodial deaths and protect the rights of detained persons.<sup>23</sup> In the year 1948, after the horrible incidents of World War II, the General Assembly of the United Nations introduced the prohibition against torture provision in the significant Universal Declaration of Human Rights. Article 5 of the declaration states: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."<sup>24</sup> Torture is universally condemned. *To deal with this blatant inhuman practice, apart from the Universal Declaration of Human Rights, it has been widely incorporated in a wide range of international and regional human rights treaties, such as Article 7 of the International Covenant on Civil and Political Rights (ICCPR) (1966), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), The European Convention for the Protection of Human Rights and Fundamental Freedoms (1953), African Charter on Human and Peoples' Rights (1979), American Convention on Human Rights (1969).*<sup>25</sup> Accordingly, in tune with the international human rights instruments against torture, the Constitution of India paid respect and honour to human dignity and fundamental freedoms. The Preamble, the fundamental rights, directive principles of the State Policy and various other provisions stand for the protection of human rights. Beginning with the Preamble, the Constitution assures every citizen of the dignity of the individual and guarantees justice - social, economic and political, equality of status and opportunity. Article 21 guarantees the right to life and personal liberty, of which deprivation can only be by the procedure established by law, which must be just, fair and reasonable.<sup>26</sup> It also includes the right to live with human dignity in its expanded

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<sup>22</sup> Mishra, *Supra* note 6, at 512.

<sup>23</sup> Garg, *Supra* note 3, at 1158.

<sup>24</sup> See "*id*"

<sup>25</sup> See "*id*"

<sup>26</sup> Indian Const. art 21

form and, thus, would guarantee against torture and assault by the state or its functionaries. Therefore, the right against custodial violence arises from article 21 of the Constitution. Besides, article 20(3) mandates self-incrimination<sup>27</sup>—article 22 guarantees protection against arrest and detention in some instances.<sup>28</sup> Article 22(2) directs that an arrested person or person detained in custody shall be produced before the nearest magistrate within 24 hours of his arrest, excluding the journey period.<sup>29</sup> Right to life and personal liberty has, thus, acquired the status of a sacred and cherished right under the Constitution and cannot be denied to anyone, even to convicts, undertrials and deteneu etc., except according to procedure established by law. In consonance with the constitutional mandate, several statutory provisions also seek to protect persons from being tortured.<sup>30</sup>

However, in the above background, it is essential to discuss that India is one of the very few countries that have not yet ratified the UN Convention against Torture, which is not exactly ideal for protecting human rights in our country. India does not have a separate anti-torture law, and ratifying it would require framing such a law. An attempt was made in 2010 when the anti-torture bill was passed in the Lower House and then referred to the Select committee, which recommended extensive changes. Nevertheless, it didn't yield any result, and the bill lapsed.<sup>31</sup> Simultaneously, there are many loopholes in the police legal system. Under the Criminal Procedure Code,<sup>32</sup> the Police authorities are empowered with enormous power, which sometimes becomes the cause of Custodial death. Under Section 41 of the CrPC, the Police have the authority to arrest without a warrant and a magistrate's order.<sup>33</sup> At the same time, in the case of death in police custody, the investigation is entrusted to an executive magistrate with powers to absolve the police officers of their crimes. The enquiry is an administrative action and useless for initiating any action. Why shouldn't the Police be put up for trial before a Sessions Judge whenever death occurs in a police station or while in custody? Is not the procedure prescribed under section 176 patently discriminatory and violative of Article 21?<sup>34</sup> Concurrently, under the Indian Evidence Act, the burden of proof is

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<sup>27</sup> Indian Const. art 20, cl. 3.

<sup>28</sup> Indian Const. art 22.

<sup>29</sup> Indian Const. art 22, cl. 2

<sup>30</sup> Mishra, *Supra* note 6, at 517.

<sup>31</sup> Garg, *Supra* note 3, at 1157.

<sup>32</sup> Act no. 2 of 1974.

<sup>33</sup> Act no. 2 of 1974 Sec. 41.

<sup>34</sup> *Supra* note 7, at 1831.

on the victim's family in case of custodial death. Why should not the presumption of guilt be raised against police authorities? The law enacted during the colonial period with such a mindset is still prevalent - Police Act 1861.<sup>35</sup> It doesn't have any provision to deal with the cadre training to interrogate the accused, investigate the case scientifically, and teach them about human rights.<sup>36</sup> Hence, in light of the loopholes mentioned above in the Indian Legal system, one can't say that the Indian legal framework complies with the International legal frameworks. The pathetic conditions of the Indian legal system only show that law and order is an illusion, whereas law vs order is the reality.

## Role Of The Indian Judiciary In Combating Custodial Torture

Since our Constitution has adopted, the judiciary has played various roles in safeguarding the interest of citizens. Concerning custodial torture, deaths and police atrocities, it has played an essential role in protecting the rights against human abuse in police custody. Even though our Constitution has impliedly recognized the rights of arrestees, the judiciary has guaranteed and enforced it. India wouldn't have been a democratic country without the bench. The Supreme Court and High Courts of different states have protected the right of arrestees. In the case of *Nandini Satpathy*,<sup>37</sup> the honourable Supreme Court held that an investigator should possess the qualities of patience and perseverance and must avoid using the third degree as it has become outlawed. Dealing with the role of the Police, the apex court again, in *Delhi Judicial Service Association v. State of Gujarat*,<sup>38</sup> condemned the arbitrary and excessive use of force by the Police. An example of serious actions taken by the judiciary could be seen in *Joginder Kumar v. State of U.P.*,<sup>39</sup> where the Supreme Court held that no arrest could be made unless a police officer is, apart from his power to arrest, able to justify it. Again, the Supreme Court in *D.K. Basu v. State of West Bengal*<sup>40</sup> warned that: "Failure to comply with the requirements shall, apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court, and the proceedings for contempt of Court

<sup>35</sup> Act no. V of 1861 amended by Act no. LX.

<sup>36</sup> Kamboj, *Supra* note 17, at 375,376.

<sup>37</sup> *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025

<sup>38</sup> 1991 AIR 2176, 1991 SCR (3) 936

<sup>39</sup> AIR 1994 SC 1349

<sup>40</sup> (1997) 1 SCC 416

may be instituted in any High Court of the country, having territorial jurisdiction over the matter". Taking it seriously, the Supreme Court in *D K. Basu v. State of W.B.*<sup>41</sup> again directed the states to strictly comply with the same, observing that "the state governments ought to know that protection of human rights is their primary constitutional obligation and not the sole concern of this court alone". While protecting the interest of arrestees, the Supreme Court, in the case of *Munshi Singh Gautam v. State of Madhya Pradesh*, has stated that: "The dehumanizing torture, assault and death in custody which has assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system... the concern which was shown in the Raghbir Singh case more than two decades back seems to have fallen on deaf ears, and the situation does not seem to be showing any noticeable change. However, the Supreme court, in the case of *D.K. Basu v. State of West Bengal*,<sup>42</sup> has provided guidelines to safeguard the interest of arrestees. Once more, in the case of *D.K. Basu vs State of West Bengal*,<sup>43</sup> the Supreme Court of India observed in this publicized death in police custody that the usage of torture is impermissible and violent to Article 21. The Supreme Court also ruled that the burden of justifying a custodial death lays on the Police rather than the sufferer or victim. In the landmark judgment of *T.V. Vaitheeswaran v. State of Tamil Nadu*,<sup>44</sup> the Supreme Court of India stated that the rights given to its citizens under part III of the Indian Constitution, which includes 'Articles 14,19 and 21', are also granted to the prisoners. Furthermore, the Constitution of India also provides that no person who is arrested will be detained in custody without being informed as early as possible of the ground for the arrest, nor will he be detained of the right to consult and to be defended by a lawyer of his choice.<sup>45</sup> In the case of *Sunil Batra vs Delhi Administration*,<sup>46</sup> the Supreme Court held that: The prison authorities will be obligated for a situation where the prisoner breaks down on account of mental torment and physical violence past the legitimate limits of lawful detainment. Thus, the said case gave the opportunity for the court to censure torture. In the case of *Khatri and Others vs State of Bihar & Others*,<sup>47</sup> the Supreme Court ordered to investigate and punish the liable Police officials who uncouthly blinded around thirty

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<sup>41</sup> A.I.R. 2005 S.C. 402

<sup>42</sup> (1997) 1 SCC 416

<sup>43</sup> See "Id"

<sup>44</sup> 1983 AIR 361, 1983 SCR (2) 348

<sup>45</sup> Khan & Singh, INT'L J.L. MGMT. & HUMAN., *Supra* note 12, at 1737.

<sup>46</sup> 7 1980 AIR 1579, 1980 SCR (2) 557

<sup>47</sup> 1981 SCR (2) 408, 1981 SCC (1) 627

prisoners by piercing their eyes with needles and pouring corrosive into their eyes. Further, Supreme Court denounced this savage torment as an infringement of Art. 21 and granted compensation to the sufferers.<sup>48</sup> The judiciary not only protects the human rights of people but also has assured the citizens that they live under such a legal system which aims to protect their interests and dignity and preserve their rights.<sup>49</sup>

## Suggestion And Conclusion

The practice of policing and human rights are closely interrelated. Police authorities play a vital role in protecting some fundamental rights, safeguarding the people's life, liberty and freedoms. Effective enforcement of law and order will enable people to enjoy their civil and political rights and social and economic rights. However, in recent times, thoughtless and unlawful policing has suppressed people's rights and freedoms. An alarming increase in the case of custodial torture, assault and death has also invited the judiciary's attention. With the rising cases of custodial death, India must take the necessary steps. The existing framework is insufficient to deal with the issue, and India must endeavour to form separate and comprehensive legislation on custodial deaths and anti-torture laws. India should also ratify the UN Convention Against Torture.

Further, educating and sensitizing the police personnel towards these arrestees without prejudice towards their guilt is of utmost importance, requiring an overhaul of police reforms. Further, there is no formal report or information on the exact number of custodial deaths, the reasons for deaths in police custody and the outcomes of inquiries into these deaths. For the betterment of society, it is crucial for the Indian government to recapitulate the recommendations made by different International associations to forestall the cases of custodial torture. Also, necessary changes must be brought to the provisions of the "Police Act of 1861" because, at times, the police authorities have misused their power and infringed the prisoner's human rights. The reality lies in the fact that the current period is the period of human rights, and it is the utmost duty of the state to secure these rights.

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<sup>48</sup> Khan & Singh, INT'L J.L. MGMT. & HUMAN., *Supra* note 12, at 1737.

<sup>49</sup> Mishra, *Supra* note 6, at 47.