

## POLICE? OR A CRIMINAL?

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### ABSTRACT

*“As a law enforcement officer my fundamental duty is to serve mankind, to safeguard lives and property, to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence and disorder; and to respect constitutional rights of all men to liberty, equality and justice”*

*-John J. Broderick*

*When we say the word ‘custody’, we associate it with terms like safety, guardianship, protection, and care. We consider the Police as a boon for the innocent citizens and a bane for the criminals. However, the ‘punishment’ must be granted in accordance with the law, not by violating the same. It is the responsibility of a state to protect the human rights of a person who is in the custody of the Police. The right to life is the most important right that a state has to protect. However, there are several cases of custodial death that come into the limelight each year of such instances have been increasing ever since. In this paper, the authors focus on various aspects of the custodial deaths in police stations regarding the problems faced by the prisoners, questioning the safety of the accused in custody. Further, the authors also discuss the causes of the continuing impunity for custodial deaths in India and the measures taken by the authorities to curb it. This paper then expands the scope of the problem by drawing an in-depth analysis of judicial decisions and highlighting the fact that the police personnel neither follow proper arrest procedures nor are they punished adequately if proven guilty with the help of various reports on custodial deaths in India. Lastly, the authors have recommended the steps that are needed to be taken by the government to prevent such mishaps.*

*“The police reflect the state and the state, the society. The state teaches us by example and if the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself, it invites anarchy.” -Justice Louis D. Brandeis<sup>2291</sup>*

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\*DSNLU, Vizag.

<sup>2291</sup> Olmstead v. U.S., 277 U.S. 437-438 (1928).

Often, India takes pride in broadcasting its non-torturous methods of reforming criminals and its' criminal justice system. But often newspapers and News channels are flooded with disheartening incidents highlighting the brutality of police when it comes to criminals in custody. The belief of the police that they are superior to the civilians and the credence that they'll get away with custodial violence has been rooted in their minds. Despite countless attempts by the Indian Legal System to enforce legal provisions and various intricate instructions and guidelines prohibiting custodial violence, the Indian Police officer refuses to abide by them.

Ergo, custodial deaths reflect more heat than light. In democracies like India, it is the responsibility of the police to make sure that criminal laws are enforced and also be a host of other regulatory laws that make society a safer and systematic place to be. But the reports Published by National Human Rights Commission ["NHRC"] regarding custodial deaths paint a different picture. According to NHRC reports, there are 144 cases registered pertaining to deaths in police custody, 1530 pertaining to that of Judicial custody, and around 19 fake encounters reported in 2018-19. To quote an instance, the Hyderabad police did not register Janardhan's arrest even though they took him into police custody on 2<sup>nd</sup> August 2009. The last time Janardhan's family saw him was on 3<sup>rd</sup> August when he was brought to his home for a short period by four policemen. They also stated that he was handcuffed and was tortured ruthlessly. Janardhan died in police custody the next day. The policemen denied to take any responsibility and even said, "What can we do? He had a heart attack." But the brother of the deceased, Sadanand said that he saw bruises and cuts on his brother's body which indicate police brutality. The police during the earlier stages of investigation denied the allegations of illegal detention but after protests, the police chief accepted the negligence of his officers regarding Janardhan's detention.<sup>2292</sup> Janardhan's case was an explicit example of the lethargic attitude of the Indian Police System even after the guidelines prescribed in the *D.K. Basu*<sup>2293</sup> even after two decades of these guidelines being given.

## ***SERMO ET LEGIS (THE WORD OF LAW)***

The fact that most of the alleged accused who are taken into custody are blindsided and unaware that the police have limited authority to use force and have certain boundaries

<sup>2292</sup>Arun Mehta, *Murder case booked against SI*, THE HINDU (July 10, 2020, 3:30 P.M.), <http://www.thehindu.com/news/national/tamilnadu/murder-case-booked-against-si/article7115490.ece>.

<sup>2293</sup>D.K.Basu v. State of West Bengal, AIR 1007 SC 610.

according to the prevailing laws, has become an excuse for the officers to continue doing such dreadful acts. Not only the civilians but also the government and the police are subject to the “Rule of Law” implying that both the ruler and the ruled are accountable. Therefore, when a policeman inflicts torture on an arrestee even though it is the direct order of his superior officer, the policeman is still responsible and is liable to be prosecuted under the law. As per the Indian Legal System, there are certain rights which are guaranteed to the accused in custody,

- Right to be informed of the grounds for arrest.
- Right to consult a Legal Practitioner.
- Right to be produced before the Magistrate before 24-hours of the arrest.
- Bar against Handcuffing
- Right against self-incrimination.

The Code of Conduct for the police in India adopted at the Conference of Inspector- Generals of Police in 1960 also highlights this predicament. Clause III states that under no circumstances should the police punish the guilty, which is the function of the Judiciary.<sup>2294</sup> According to the Indian Penal Code, 1860 custodial torture is an offence punishable under § 330 and 331 with up to 10 years of imprisonment.<sup>2295</sup> Death due to torture in custody amounts to murder under the Indian Penal Code for which the maximum punishment is the death penalty. Section 24, 26 and 27 of the Indian Evidence Act, 1872<sup>2296</sup> and Section 162, 163(1), 315 and 342(a) of the Criminal Procedure Code 1973<sup>2297</sup> also prohibit forced confession or testimony as inadmissible in the Court of law and protect the accused against such allegation. Section 29 of the Police Act, 1861<sup>2298</sup> also prescribes that a police officer shall be held guilty of any violation of duty or wilful breach or neglect of any rule or regulation of lawful order made by the competent authority. Furthermore, State Police Acts also prescribe that it is the duty of the SHO (Station House Officer) or Police *Choki*-in-charge to keep the arrestees safe from third-degree treatment or physical assault.

According to the procedure prescribed by law in every case of custodial death, it is the duty of the Judicial Magistrate to conduct an inquiry, and it is also expected that the police lodges an FIR (First Information Report) and the investigation is to be conducted by a police station

<sup>2294</sup>N.P.C., Second Report (Aug 12, 1979).

<sup>2295</sup>The Indian Penal Code, 1860, § 330-331.

<sup>2296</sup>The Evidence Act, 1872, § 24,26-27.

<sup>2297</sup>The Code of Criminal Procedure, 1972, § 162,163(1), 315, 342(a).

<sup>2298</sup>Police Act, 1861, § 29.

or an agency other than the one alleged of the crime. It is also required that all the cases of custodial deaths are reported to the NHRC (National Human Rights Commission) and also the police have to submit all its' findings of the Magistrate Enquiry along with the post mortem report. The rules of the NHRC also make it mandatory for the autopsy to be filmed and the autopsy report to be prepared as per a model form. Unfortunately, all of these procedures have been ignored from time to time. Consequently, the departments responsible for such enquiry are bound by brotherhood, and therefore shadowing the wrongdoer.

India has ratified the International Covenant on Civil and Political Rights<sup>2299</sup> and is a signatory to the convention against torture and other cruel, inhuman, or degrading treatment, both of which forbid torture and cruel, Inhuman and gruesome treatment or torture. Officials violating this can be held liable and the Central Government also reprimands such brutality and provides safeguards against it.

## THE BEGINNING OF CULPABILITY

There have been several instances where Section 197 of the Criminal Procedure Code<sup>2300</sup> (which provides immunity to any public official from being prosecuted for any action that they have carried out during their official duty) has been misused. A plethora of cases has not been even reported against the police officers because of the threat and battery that they pose to the common man.

In the year 2000, where two police officials were accused of unlawful detention and brutal torture of a man, they were set free by the Supreme Court, which reasoned that:

*“There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty.”*<sup>2301</sup>

When the news of Aniket Khicchi, a 20-year-old boy who died in police custody came in the limelight, the Bombay high court convicted the four Police constables for Culpable Homicide not amounting to murder and voluntarily causing hurt to extract a confession. They were sentenced to seven years of Imprisonment.<sup>2302</sup> This was a consequence of the landmark judgement which gave exhaustive guidelines towards the issues of custodial death i.e. *D.K.*

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<sup>2299</sup>International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A, Art. 3, Mar.23,1976, U.N.T.S. 17.

<sup>2300</sup>The Code of Criminal Procedure, § 197.

<sup>2301</sup>P.P Unnikrishnan v. Puttiyotti Alikutty, 2000(3) ACR 2368 (SC).

<sup>2302</sup> State of Maharashtra v. Chandrakant Rajaram Kamble and Ors., 2013 (6) ABR784.

*Basu V. State of West Bengal*<sup>2303</sup>. The following are the guidelines given by the Supreme Court in the case:

- The arresting officer should bear accurate, visible, and a clear identification tag.
- The arresting officer must prepare a “Memo of Arrest.”
- The nearest friend and relative (of the arrestee) must be informed of the arrest and sign the memo.
- When the friend/relative does not stay in the jurisdiction of the police station, the information should be sent to the police station through a legal aid organisation within the jurisdiction.
- The information to such a friend/ relative is the right of the arrestee.
- A diary has to be maintained at the place of detention containing the name of the arrestee, offence he/she has been arrested for, the name of the arresting officer, and the name of the officer under whom he/she has been detained.
- He/she has to undergo a medical examination at the time of the arrest.
- The arrestee must be subjected to medical examination every 48- hours.
- The copies of all these documents must be sent to the Judicial Magistrate
- The arrestee has the right to meet his lawyer.
- The Police Control room should be provided with the details and information on the noticeboard.

In *Sube Singh v. State of Haryana and Ors.*<sup>2304</sup> The Supreme Court of India stated that custodial violence requires to be tackled from two perspectives; measures that are remedial and preventive. Award of compensation should not be the only remedial measure after the mishap; therefore, attempts must be made to remove the root causes which lead to custodial violence so as to adhere to the principle of prevention being better than cure. These steps are enumerated below:

- Police training must be reoriented, to bring in a change in the mindset and attitude of the police personnel regarding investigations, so that they will recognise and respect human rights, and adopt thorough and scientific investigation methods.

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<sup>2303</sup> Supra note 4, ¶ 14.

<sup>2304</sup> Sube Singh v. State of Haryana and Ors., A.I.R. 2006 SC 1117.



- The functioning of lower-level police officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation.
- Compliance with the eleven requirements enumerated in *D.K. Basu v. State of West Bengal*<sup>2305</sup> should be ensured in all cases of arrest and detention.
- Simple and fool-proof procedures should be introduced for prompt registration of First Information Reports Relating to all crimes.
- Computerisation, video recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions, and ante-dating in regard to FIR, Mahazars, Inquest proceedings, post mortem reports and statements of witnesses, etc., and to bring in transparency in action.

An independent investigating agency (preferably the respective Human Rights Commissions or CBI) may be entrusted with adequate power to investigate complaints of custodial violence against police personnel and take stern and speedy action followed by prosecution, wherever necessary.<sup>2306</sup>

Justice A.S. Anand opined in *Nilabati Behera v State of Orissa and Ors*<sup>2307</sup>,

*“It is axiomatic that convicts, prisoners or undertrials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the state, to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen in its custody. The precious right guaranteed by Article 21 of the constitution of India cannot be denied to convicts, undertrials or other prisoners in custody, except according to the procedure established by law. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care on the part of the state is strict and admits of no exceptions. The wrongdoer is accountable and the state is responsible if the person in custody of the police is deprived of his rights except according to the procedure established by law.”*

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<sup>2305</sup> Supra note 4, ¶ 3.

<sup>2306</sup> Supra note 4, ¶ 7.

<sup>2307</sup> *Nilabati Behera v State of Orissa and Others*, A.I.R. 1993 SC 1960.

For a country like ours, where crime against the accused happens not because of the negligence of the authorities but through the explicit orders given by them, it is high time the lawmakers of the country take actions against this unending torture. On the contrary, the cases of custodial death have become more and more gruesome. The horrifying death of the father-son duo in Tamil Nadu is a blatant paradigm of this pattern recurring in our society. On June 19, 2020, P. Jayaraj (father) and Emmanuel Fennix (son) were taken into custody by the police for allegedly keeping their mobile shop open for longer than the time period allowed under the COVID-19 restrictions. Four days later, they were pronounced dead in the hospital. People around the country raised their voices condemning this action. In a response to such outrage, the Madras High Court took Suo moto cognizance of this matter and decided to. The Chief Minister of Tamil Nadu expressed his deep condolences over the matter and announced a compensation of ₹10 lakh to the family of the deceased and ordered the suspension of the involved police officers. It is high time that the judicial authorities consider that the solution to such issues does not lie in compensating and reprimanding but lies in the correction of fundamentals of our criminal justice system.<sup>2308</sup>

## RECOMMENDATIONS: A WAY FORWARD

The redressal mechanism has to be introduced which has a three-step system: The first being a grievance cell, which is available in every police circle. The second, a complaint board that has to be established at every district, and the final being a state security commission that operates at the state level. The members of these committees must be reputed human rights activists, social workers, media men who have the interest to ensure justice for arrested persons. The committee also has to maintain proper records regarding the whereabouts of the detainee and his arrest.

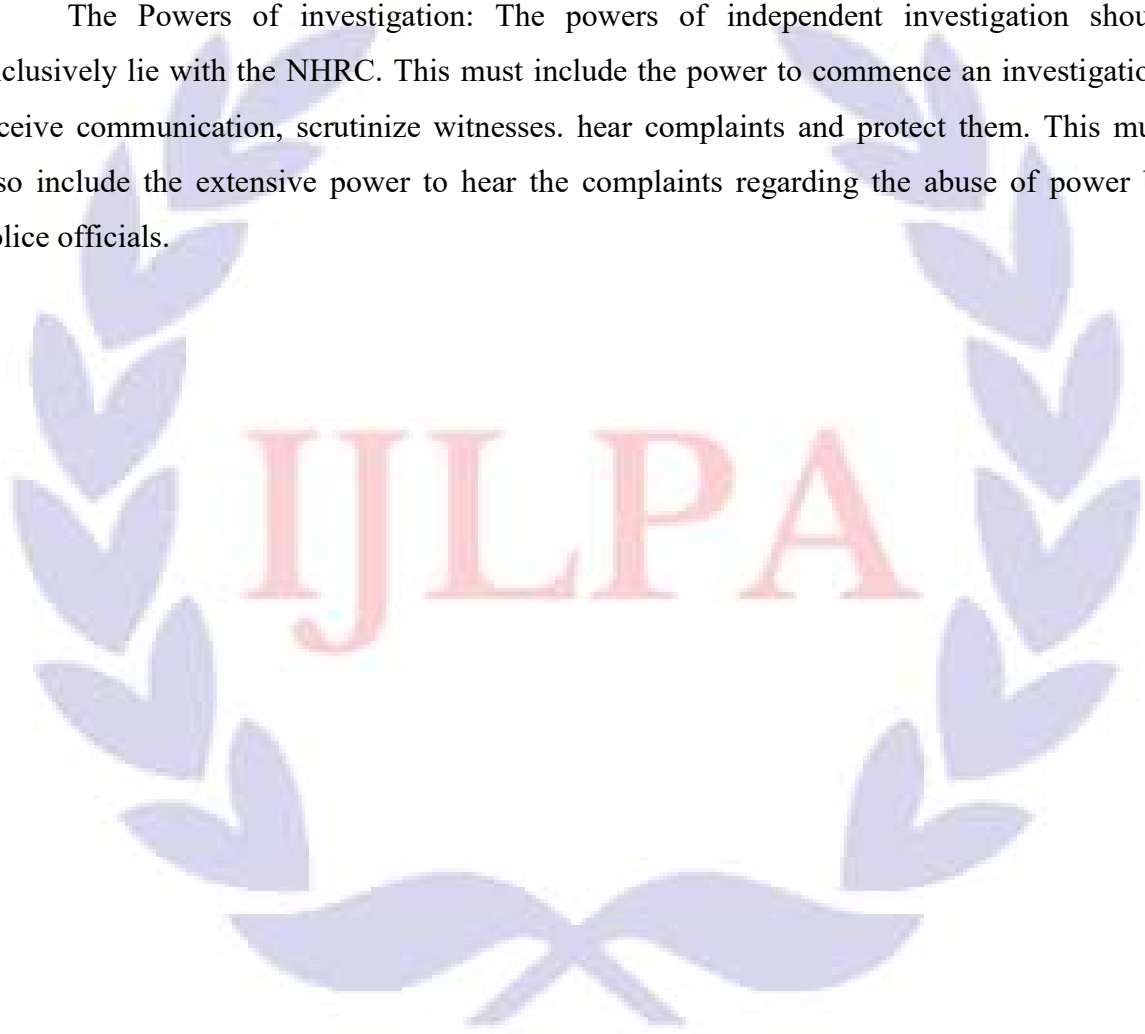
Scientific recruitment, training, workshop, orientation, and refresher programs: Scientific method of recruitment is to be adopted to obtain the professional aptitude, sound character, political neutrality, above-average intelligence, and emotional stability of a candidate. Focus on training throughout the service at regular intervals should be made to update the knowledge and skill of police personnel. Police training academy should initiate a human rights training program.

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<sup>2308</sup> [Editorial Analysis] Senseless deaths: On Tamil Nadu custodial deaths, THE HINDU (August 10,2020, 10:02 P.M.), <https://aspirantworld.in/editorial-analysis-senseless-deaths-on-tamil-nadu-custodial-deaths/>.

Compensation to victims, their families, and judicial activism: Compensation of victims of custodial violence must be awarded regular or comprehensive bases or principles for quantifying the amount. A proper law on the subject of compensation that has uniformity has to be made including compensation, there must also be appropriate punishments that are sanctioned on the convict.

The Powers of investigation: The powers of independent investigation should exclusively lie with the NHRC. This must include the power to commence an investigation, receive communication, scrutinize witnesses. hear complaints and protect them. This must also include the extensive power to hear the complaints regarding the abuse of power by police officials.

A large, faint watermark of the IJLPA logo is centered on the page. It consists of a blue laurel wreath with the acronym 'IJLPA' in red serif font in the center. Below the wreath, the motto 'WORDS SPEAK' is written in a light blue, sans-serif font, flanked by two horizontal red lines.

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