
GOONDAISM IN POLICE CUSTODY

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ABSTRACT

Instances of police brutality frequently make the news and subject officers to harsh public condemnation. Unfortunately, information of police brutality and violence that has come in from different regions of the nation gives the impression that our police forces are staffed with bloodthirsty maniacs who enjoy the sight of crushed skulls and blinded eyes. This perception is false. Most police officers and men have a certain level of dedication and drive that allows them to endure the pressure and strain of their demanding profession. Of sure, some people do engage in brutality and torture. Deaths while in custody produce more healing than light. The National Police Commission (1977) examined accusations of police abuse and fatalities in custody in eight States and discovered that the police were held accountable in 23 out of 430 probes by other agencies, 37 out of 82 enquiries by magistrates, and 11 out of 17 court inquiries. The National Police Commission suggested that mandatory court probes be conducted in every instance of a death while in custody. It is also true that those who experience custodial abuse typically come from underprivileged backgrounds with limited access to political or financial support. Sections like 41, section 330 & 331 of criminal procedure code and Indian penal code respectively deals with custodial torture against the person who is in custody. The primary focus of this research paper is to comprehend the concept of custodial deaths in prison because of police brutality, violence or third degree torture to obtain the incident.

Introduction

Death in prison is not a recent concept, especially in India, where the phenomenon of death in prison has been practised since the days of Indian sovereignty in British hands. Police brutality and violence have increased exponentially over the past four to five years. This reflects the lack of legal provisions in our justice system to reprimand law enforcement agencies for committing atrocities and engaging in torture using "obligation". as a defensive measure". Police brutality often results in serious injury to defendants and to prevent such incidents, police forces must be instructed in the appropriate use of force. The perception created by the media against the accused also contributes to prison violence. Jayaraj and Bennix's deaths in Tamil Nadu prison have caused public outrage and people have raised their voices to demand a proper mechanism to prevent police torture. These cases have highlighted the absence of anti-torture laws in India and calls have been made for legislation to prevent such incidents from happening. Usually, custody and arrest are considered synonymous. However, this is not true. Guardianship involves placing a person under protection based on fear that the person may cause harm to society. The term "arrest" means that a person is officially detained because they are suspected of committing a crime. Thus, in each arrest, there is police custody, but the opposite is not true.

When a police officer arrests an individual accused of a crime and takes him to the police station, we talk about police custody. When in police custody, the detainee must not be detained for more than 24 hours in a police station and during this time the officer in charge will question the suspect. The police must present the suspect to the judge within 24 hours of the arrest. When in police custody, the defendant is physically detained by the police, but during judicial custody, the defendant is detained by a judge of the relevant jurisdiction. As opposed to police custody, where the suspect is locked in a police cell; was detained by the police, the accused was held in prison. The police officer in charge is not authorised to investigate a suspect in custody unless the court considers that interrogation is necessary based on the facts presented to the court.

Custodial Death

According to Articles 20, 21, and 22 of the Indian Constitution, a prisoner or someone in detention is entitled to a number of rights. The Indian Supreme Court has interpreted a number of rights,

including the prohibition against handcuffs, the right to a fair trial, and the right to free legal representation, as constituting a fundamental component of Article 21 of the Indian Constitution. Deaths in custody are causing concern in society.

As police officers are charged with protecting people, they fail to do their job when they break the law themselves. The only way we can have a strong and healthy democracy where there are no violations of human rights is with the cooperation of both the police and the general population. The most prized possession of man is freedom.

The cornerstones of India are its secularism, socialism, sovereignty, and democratic republicanism. In a democracy, the role of the police is to keep people safe, not to torment them. In order to allow for the practice of freedom, a safe and orderly society is what the police are there to ensure. When those who create and uphold the law turn against them, and those who defend human rights become oppressors, democracy is put in danger. The accused is protected from arbitrary arrest and violence in detention by the Code of Criminal

Procedure, 1973 and the Indian Penal Code, 1860. However, new rules under the Code and Indian Evidence Act, 1872, which particularly address the problem of custodial deaths, whether they are unnatural or natural deaths in the police lockup, must be implemented by legislation.

Police Custody and Judicial Custody

Investigating and preventing crime is one of the police's most important responsibilities.

The people who are allegedly responsible for an offence or who are the subject of valid suspicions may need to be detained by the police during the course of the investigation. The word "arrest" comes from the French verb "arreter," which means to take into custody in order to respond to a criminal charge or to prevent a crime. The first of the following three elements must be present for an arrest to be valid:

1. The intention to arrest legally.
2. Detention must be done legally.

3. The individual being detained must understand why he is being held.

The authority to make arrests¹ and the protocol that police officers must follow are two topics covered in Chapter V of the Criminal Proceeding Code of 1973.

Any police officer may make an arrest pursuant to Section 41 of the Criminal Procedure Code without a magistrate's order or a warrant.

Under Section 42 of the Criminal Procedure Code, the police are also authorised to detain anyone who, while a police officer is present, has committed or has been accused of committing a non-cognizable offence, refuses to provide his name and address upon request, or provides information that the officer has reason to believe is false.

How the arrest is to be effected is specified in Section 46 of the Criminal Procedure Code. If the subject of the arrest resists, Section 46 gives the police further authority to employ any and all methods required to make the arrest. The ability of police to use force against a person in the course of an arrest is nevertheless constrained by Section 46, sub section (3).

Another limitation on the police's ability to handle the apprehended individual is imposed under Section 49 of the Criminal Procedure Code. It stipulates that the police are not allowed to exercise more restraint than is necessary to stop an arrested individual from escaping.

According to Section 56 of the Criminal Procedure Code, a police officer making an unwarranted arrest must immediately take or send the person apprehended before a magistrate with jurisdiction over the case or the officer in charge of a police station. According to section 57 of the Criminal Procedure Code, no police officers may hold a person arrested without a warrant in custody for any longer than is reasonable given all the circumstances of the case. This period cannot, in the absence of a special order from a magistrate under section 167, exceed twenty-four hours, not including the time needed to travel from the place of arrest to the magistrate's court.

When an investigation cannot be finished in 24 hours, a proceeding is prescribed by Section 167

¹ Tripaksha Litigation, *Difference Between Police Custody and Judicial Custody*, Tripaksha Litigation, (Aug 17, 2023, 6:58 PM), <https://tripakshalitigation.com/difference-between-police-custody-and-judicial-custody/>

of the Criminal Procedure Code. In these situations, the investigating police officers must immediately deliver the accused to the closest Judicial Magistrate. The accused person may be held in police custody for a maximum of 15 days with the Magistrate's approval. If the offence carries a sentence of death, life in prison, or a term of imprisonment of at least ten years and sixty days and the investigation relates to another offence, the accused may be remanded to magisterial custody for a period of time exceeding fifteen days but not exceeding ninety days.

In accordance with Articles 21 and 22(1) of the Indian Constitution, the arrested person is also entitled to protection. The Supreme Court ruled that handcuffing is *prima facie* inhumane, unfair, and arbitrary and as such is against Article 21 of the Indian Constitution in *Prem Shankar Shukla vs. Delhi Administration*, AIR 1980 SC 1535.

Police Custody

Police custody, also known as remand, denotes that the accused is physically in the police's custody and is being held in a police station holding cell. In order to prevent the tampering of evidence or the influence of witnesses, the accused is taken into custody by the police after a FIR is filed for a cognizable offence (which carries a sentence of more than three years). Police receive an information, complaint, or report about a crime, an officer arrests the suspect involved in the crime in order to keep him from committing more offensive acts. The suspect is then brought to police custody. In reality, the police are holding the suspect in their custody in a jail within the police station. The police officer in charge of the case may question the suspect during this detention, which cannot last more than 24 hours.

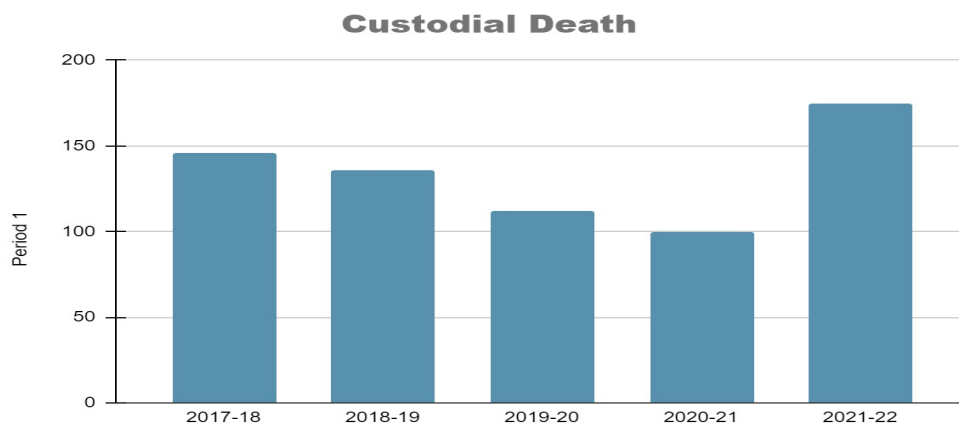
Within 24 hours, excluding the time required for the necessary trip from the police station to the court, the officer in charge of the case must present the suspect before the relevant judge.

Judicial Custody

In cases of significant crimes, the court may grant the police's request to remand the accused in judicial custody after the police custody period has ended in order to avoid the tampering of witnesses or evidence. A person will remain in judicial custody if the investigation is ongoing, the police have not filed the charge sheet within 60 days for offences carrying a maximum sentence

of 10 years in prison or less, or within 90 days for offences carrying a maximum sentence of 10 years in prison or more, and he has not applied for bail. In accordance with Section 436A of the Criminal Procedure Code of 1973, a person may request default bail if they have been in judicial custody for at least half of the maximum penalty that could be imposed for the offence and the trial is still ongoing.

Statistical Data



The data² provided that overall across India while the number of such custodial deaths had declined over three successive years from 146 in 2017-18 to 136 in 2018-19, then to 112 in 2019-20 and further to 100 in 2020-21, they had recorded a sharp rise to 175 in 2021-22. And over the last three full financial years, there was a nearly 60% jump in such cases. Among the states, over the last three years, the highest number of cases were reported from Gujarat (53), Maharashtra (46), Madhya Pradesh (30), Bihar (26), Rajasthan (21), West Bengal (20) and Uttar Pradesh (19).

As for the rise in custodial death cases over the last three years, the number of such cases rose from 3 in 2019-20 to 30 in 2021-22 in Maharashtra; they increased from 12 to 24 during the same period in Gujarat; from 5 to 13 in Rajasthan; from 4 to 8 in Karnataka, from 3 to 8 in UP and from 2 to 6 in Kerala.

² THE WIRE STAFF, *Deaths in Police custody Rose Sharply*, The Wire.in, (Aug 17, 2023, 2:57 PM), <https://thewire.in/rights/india-custodial-deaths-data-rajya-sabha-2023>

Laws and rights of person in custody

The Criminal Procedure Code (CrPC) specifies what should be done while holding someone involuntarily or while they are on remand from the court. According to Section 57 of the CrPC, a police officer is not allowed to keep a person in custody for more than 24 hours. Before keeping a suspect for more than 24 hours, the officer is required by Section 167 of the Criminal Procedure Code to get special permission from the magistrate. One of the most terrible types of human rights abuses is abuse in prisons. Everyone is guaranteed the right to life and liberty under the Indian Constitution, which also forbids the use of any form of torture during interrogation in an attempt to plead guilty. Despite the fact that authorities such as the police violate these rights guaranteed by law and commit acts of detention, ill-treatment, brutality and other cruel treatment of detainees and offenders, the Constitution of India still guarantees their protection while in police and court custody.

The main defence against criminal conviction is found in Article 20 of the Constitution of India. The primary defence in this section is against self-incrimination. Even if someone doesn't commit the alleged crime, the police torture him until he confesses. The right not to be tortured is guaranteed by Article 21 of the Indian Constitution. The fact that the right to life includes more than the ability to live as an animal reinforces this view. According to Article 49 of the Criminal Procedure Code of 1973, a suspect cannot be detained or confined for longer than the prescribed time to prevent his escape. The keyword in this sentence is "required". The state and police have a responsibility to ensure that the alleged perpetrator is not unnecessarily subdued. The use of excessive force or torture against detainees is prohibited and police officers who abuse their powers may be prosecuted under certain sections of the Indian Penal Code 1860. S . 349 to 358 of the Indian Jury Code, 1860, which contains the Criminal Force and Assault Acts, are among such sections. Section 340 of the Indian Council Code, 1860 is also included.

D.K Basu Case and Guidelines

In the case of D.K. Basu case³ the Honourable Supreme Court of India has given guidance to all

³ Juhi Sharma, *Guidelines for arrest*, Legal Aid, (Aug 17, 2023, 10:19 PM), <https://legalaid.co.in/general-legal/d-k-basu-guidelines-for-arrest/>

the specific requirements and procedures to be followed by the police and other authorities when arresting, detaining and interrogating any person and these instructions are called DK

Basu instructions because Shri DK Basu is the petitioner. A letter was received in 1986 from a death incarceration non-society in the state of West Bengal and this was processed as a written query and then comments. passed. In this case, the State of West Bengal has also filed a petition and response regarding the deaths while in custody. They say there have been no deaths while in such detention and if there are, an investigation is still underway to find out who did it.

When all of this was done, the court came to the conclusion and decided that there should be control over the police and that there should also be established guidelines for arresting an individual.

1. **ID Tags.** Police officers apprehending and interrogating detainees must wear identification tags and names that are accurate, and conspicuous. The contact details of all police officers involved in interrogation of the arrested person must be recorded in the register.
2. **Arrest Report.** That the arresting police officer must prepare an arrest report at the time of the arrest and this must be corroborated by at least one witness who may be a member of the arrestee's family , or a respectable person in the place of arrest. arrest is made. It must also be signed by the person being arrested and must include the date and time of the arrest.
3. **Inform someone.** A person who has been arrested or detained and is being held in a police station, interrogation center or other place of detention, has the right to inform friends, relatives or others about him or his important persons. concern for his welfare, as soon as possible, that he has been arrested and is being held at a particular place, unless the witness confirming the arrest is a friend or relative of arrested person.
4. **Time and Place.** The time, place and place of arrest of the arrested person must be notified to the police where you or the nearest relative of the arrested person lives outside the district or town through the district-level legal aid organization and the police. residence. related area. by telegraph within 8 to 12 hours of arrest.

5. **Right to be Informed.** Arrested persons must be informed of their right to be informed of their arrest or detention immediately upon arrest or detention.
6. **Note.** A note should be made in the detention log of the person's arrest, which must also include the name of the next friend of the person who has been notified of the arrest, and the names and contact details of the officers. police station in which the person is detained.
7. **Inspection Memo.** The person arrested, upon request, must also be examined at the time of arrest and major and minor injuries, if any on their body, will be recorded at that time. The “Inspection Record” must be signed by both the person arrested and the arresting officer and a copy of it must be given to the person arrested.
8. **Medical.** Detainees are to be medically examined by a qualified physician every 48 hours while in custody by a physician on a board of licensed physicians appointed by the Director of Health Services of the State or Federal Territory. designated authority, the Director of Health Services shall prepare such a panel for all Tehsils and Districts equally.
9. **Magistrate.** Copies of all documents, including arrest reports, mentioned above, should be sent to the magistrate for his records.
10. **Legal Aid.** The arrested person may be allowed to see his or her attorney during the interrogation, but not during the interrogation.

NILABATI BEHERA VS. STATE OF ORISSA AND ORS (1993 AIR 1960, 1993 SCR (2) 581)

The case of Nilabati Behera v. State of Orissa⁴ is an important case and often regarded as a turning point in the history of custodial deaths in India. Only in accordance with the procedures set forth by law may the priceless right protected by Article 21 of the Indian Constitution be denied to those who have been found guilty, are awaiting trial, or are otherwise detained. The

⁴ J.S Ssharma, *Nilabati Behera v. State of Orissa*, indiankanoon, (Aug 18,2023, 5:05 PM), <https://indiankanoon.org/doc/1628260/>

police or jail officials have a big obligation to make sure the person they are holding doesn't lose his or her right to life. Facts of the case states that

1. In the current instance, Smt. Nilabati Behera wrote to the Supreme Court stating that her son Suman Behera, age 22, had passed away in police custody after suffering several injuries.
2. According to Article 32 of the Indian constitution, the honourable court took suo moto action and transformed it into a writ petition.
3. According to the petitioner, her son's fundamental right to life, which is protected by Article 21, was violated.
4. Suman Behara was imprisoned at the police outpost after being nabbed by the Orissa police for a theft probe.
5. His decomposing body was discovered next to the railway track the very following day. His body had wounds, which suggested an unusual death.

CASE JUDGEMENT

Case of Nilabati Behera vs. State of Orissa Justice Jagdish Sharan Verma, Justice A.S. Anand, and Justice N. Venkatachala rendered judgement in this case. The court noted that there was no convincing evidence of any police search to locate Suman Behara or of his escape from police custody after considering the facts and pieces of evidence of the case and the arguments of both counsels. The police also responded considerably later to take custody of the body after it was reported by railway workers, which called into question the reliability of their account. In addition, a physician testified in court that the damage was brought on by a blunt object, maybe lathi strikes. A railway accident could hardly have resulted in all the wounds discovered on his body. Also, the court sketched.

CONCLUSION

The explanation to the issue of custodial deaths as a whole lies in steps taken to prevent custodial torture, and such violence in general, and to minimise the number of custodial deaths in other

situations by developing effective systems and procedures for prompt and adequate medical aid, when necessary, and reasonable preventive measures against accidents and suicide. To alter the existing public viewpoint, it would also be important to put such fatalities in the correct context. from 146 in 2017-18 to 136 in 2018-19, then to 112 in 2019-20 and further to 100 in 2020-21, custodial Deaths had recorded a sharp rise to 175 in 2021-22.

In situations when a person dies while being held in custody, police operations must be closely monitored, and any guilty police officers must face strict punishment. To convince the authorities that they cannot abuse their power, a precedent must be established. It is quite challenging to predict that the situation with relation to custody mortality would improve given the existing situation. There is a need for strict judicial action that will only be focused on punishing the staff members whose violent force resulted in a loss of life and who abused their position. The rules established in the landmark cases of D.K. Basu v. State of Bengal and Prakash Singh must be followed to ensure a decrease in custodial deaths.