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## **CUSTODIAL DEATHS: ACCIDENT OR AN EYE-WASH?**

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### **ABSTRACT**

Custodial deaths need no introduction. It is possibly one of the most ancient practices that has going on for a long time without any proper check. Incidents of police torture frequently make headlines, calling into question the credibility of those tasked with upholding the rule of law. Despite elaborate provisions and detailed instructions in police manuals forbidding abuse of power, many a police officer develops the impression that he can get away with torture and brutality inside the lock-up because such a charge will be difficult to prove. He also has a notion that his superiors and subordinates will rally around him and try to cover up his wrongdoings, which is exactly what happens in the real world. This is why, today, there is a significant disparity between the actual number of deaths in police custody and those recorded in the national record.

This article therefore strives to look at custodial death from a point of view that has never been harped before. It aims to highlight the disparity in the national data while also bringing into limelight the low rate of conviction of police personnel for such deaths. It scrutinizes the probable reasons that might be at play behind the same thereby forcing the readers to think at the end of it as to whether these deaths are a mere accident as portrayed by the concerned authorities or just an eye-wash to escape conviction.

**Keywords:** custodial deaths, police, torture, disparity, reasons, conviction

## **Introduction**

India has a complex jurisprudence system that enshrines the broad classification of civil and criminal laws. Lawmakers have crystallised and codified the components of these fields of law into substantive and procedural wings for real-world application. The Indian Constitution bestows certain powers and functions on the state in order to maintain public peace and tranquillity and to maintain law and order. Various agencies of the state strive to maintain equilibrium in the functioning of daily life, and law as an instrument to govern an individual's behaviour, is used as a tool to monitor the activities of the citizens. However, in certain situations, the protectors and implementors of law, frustrate this entire cause of providing them with power and the authority. While custodial violence is nothing but a senseless display of power by the powerful over the powerless, custodial deaths on the other hand are a reminder of violation of our basic fundamental rights.

This article will take us through one of these situations, namely police brutality inside the closed lock up cells, and demonstrate the gap that has existed and continues to exist for centuries between the provisions of the Supreme Law of the Land and their application in the real world. This work will be based on discussions on specific topics that elucidate the brutal, over-empowering authority, and arbitrary use of power by the police against the general public.

### **Inconsistency between NCRB and NHRC data on custodial death: A glaring loophole**

This particular part does not involve any legal issue. However, since the entire point of the article is to point out gaps that have never been spoken about, it was necessary to include this section. The main goal is to demonstrate that the data from the National Crime Record's Bureau, also known as the NCRB, which is considered the national data base for every criminal case in India, is not authentic, but rather distorted.

A thorough research shows that there is a significant disparity between the annual data of the NCRB and that of the National Human Rights Commission, also known as the NHRC, which is responsible for the promotion and protection of human rights in India, with regard to custodial deaths.

First disparity lies in the number of deaths taking place each year. For instance, according to the NCRB data some 70 deaths had taken place in police custody in the year 2018 whereas as per the NHRC data some 148 deaths had taken place in police custody for the same year. The second discrepancy is in the reasons given for such death. According to NCRB data, the

majority of deaths in police custody are the result of either a sudden illness or under mysterious circumstances or because the accused committed suicide. On the contrary, according to the NHRC data, the main cause of such deaths were police atrocities and violence inside the lockup.

In the year 2016, as per the NHRC data a total of 4 people died in police custody in Orissa, while the NCRB report shows that no death has taken place for that year. As many as 11 encounter deaths were reported by the NHRC during the same time period. However, the NCRB figure shows number of deaths in police firing, including firing in self- defence as only 5<sup>1</sup> which itself clarifies the fact that the cases are being underreported.

### **Reason for disparity**

The main reason behind the above stated inconsistency can be attributed to how both the agencies collect their data. If we consider the NCRB first, then it collects the data with the help of the State Crime Records Bureau, hereinafter called the SCRB and the District Crime Records Bureau, hereinafter called the DCRB. The DCRB collects details of crimes from the respective police stations and forwards them to the SCRB who in turn compiles them and sends them to the NCRB either on a monthly basis or on a quarterly basis. The NCRB collects data from all SCRBs, compiles them and finally publishes them in their annual report called 'Crime in India'. In metropolitan areas (places having more than 10 lakh population) the data are collected separately and sent to the NCRB. However, complication arises at the root level where the police stations under reports the actual number of cases. Particularly in cases of custodial violence, where the police know that for every death in police custody, they have to be accountable to the concerned authorities and the public in general, they try to suppress the deaths and not furnish the correct data to the District Crime Records Bureau which eventually hampers the data that is maintained by the NCRB.

The NHRC on the other hand receives data from several avenues as a result of which suppression and underreporting of cases are not possible. According to the NHRC Guideline, 1993, every custodial death must be reported to the commission within twenty-four hours of such death. The family members of the victim can also file complaint against the offender independently. Even many human rights activists along with some Non-Governmental

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<sup>1</sup> Satyasundar Barik, *Odisha fudges police action death figures to NCRB: NHRC*, THE HINDU (Mar. 2, 2022, 10.04 AM), <https://www.thehindu.com/news/national/other-states/odisha-fudges-police-action-death-figures-to-ncrb-nhrc/article25395962.ece>.

Organizations often file petitions before the NHRC on behalf of the victims. As a result, even if the police underreport the deaths, either the victim's family or human rights activists report them, thereby increasing their data over the NCRB's.

### **Are police officers properly held accountable for deaths in custody?**

Every year, India reports more than fifty deaths in police custody. Lack of knowledge regarding human rights amongst the law enforcement officers has led to an increase in police brutality and torture. The most frightening aspect, however, is the low incidence of police officers being convicted for such deaths.

The last time when a policeman was convicted for death of a person inside the lock up, was in the year 2010. The main reason for such low rate of conviction can be attributed to the fact that most of the deaths are passed off as suicide or illness by the police. However, even in cases when chargesheets were filed against them, they have managed to avoid conviction, implying that the court had no choice but to acquit them owing to a lack of evidence.

### **Probable causes behind low conviction rate**

The most plausible explanation for the low rate of conviction of police officers is the suppression of cases and the removal of evidence. They manipulate various provisions of the Code of Criminal Procedure, 1973, to destroy any source of evidence that can buy them criminal charges for custodial violence. Some of the methods are listed hereinafter.

**a) Illegal arrest and detention:** Illegal arrests and detentions play a major role in the deaths that take place in police custody each year.

Naturally, arrest by a police officer can be made either with an arrest warrant under section 70 of the Code of Criminal Procedure or without a warrant under section 41 of the same act.

Arrest of a person with a warrant can be made only in non-cognizable offences which are defined under section 2(l) of the Code. However, every police officer who is executing such arrest is required to notify the person who is to be arrested about the grounds of arrest and if required show him the warrant as well as enshrined under section 75 of the Code of Criminal Procedure.

Section 41 of the same act states that a police officer can effect the arrest of a person without an arrest warrant issued by a court in case the person who is to be arrested has committed any

cognizable offence (as stated under section 2(c) of the Code of Criminal Procedure) in the presence of such officer, against whom a complaint has been filed under section 154 of the Code or against whom the officer has sufficient information to believe that he has committed a cognizable crime which is punishable with more than seven years of imprisonment. However even under such circumstances the arrestee has the right to be informed by the police about the grounds of such arrest as stated under section 50(1) of the Criminal Procedure Code.

However, in cases of illegal detentions a person is arrested upon the own sweet will of the police officer. They are not even informed about the grounds of such arrest which in itself is a gross violation of Article 22(1) of the Indian Constitution. When a person is arrested without any lawful ground, it is obvious that the rights which are bequeathed to an arrestee under sections 41 to 60A of Code of Criminal Procedure would not be followed such as preparing the arrest memo, letting the person meet a legal representative of his own choice, informing his family members about the same.

It must be noted here that in the case of *D.K. Basu, Ashok K. Johri v. State of West Bengal, State of UP*<sup>2</sup>, Justice A.S Anand and Justice Kuldeep Singh had enlisted certain guidelines which the police need to follow while arresting a person, in an attempt to restrict their abuse of power. One such guideline mandates that the police must make an entry of an arrest and the person informed about the same, in a book of record which is to be kept in the police station and the particulars of such arrest must be sent to the police control room established within such district and State. These provisions later paved their way to section 50 A (3) and section 41-C of the Code of Criminal Procedure, 1973 respectively. However, in cases of illegal arrests and detentions no such records are maintained by the police.

As a result, when no arrest procedures are followed and no record of the same is kept, it is easier for the police to torture these arrested persons inside the lock up, and if they later die, their bodies are quietly disposed of, removing every trace of evidence that could lead to the police being convicted. Because family members are not informed of such arrests, no one comes to look for the deceased or file a complaint against the police for in-custody torture. On a daily basis, many people in India are arrested by the police on unjustified grounds and subjected to brutality and atrocity. However, at the end of the day these cases go unnoticed and the national data ends up displaying the half-hearted image.

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<sup>2</sup> *D.K. Basu, Ashok K. Johri v. State of West Bengal, State of U.P*, AIR 1997 SC 610.

**b) Violation of section 41-B of the Code of Criminal Procedure, 1973:** While making an arrest, the police officer must prepare an arrest memo which shall comprise of the date and time of arrest and which must be attested by a witness and counter signed by the person who is arrested. This was first proposed in the D.K Basu Guidelines. Later, the same procedure was incorporated in section 41-B of the Code of Criminal Procedure, 1973. However, many times while carrying out an arrest, the police purposefully enter the wrong date and time of arrest and they either sign on such memorandum themselves or force the witness and the person arrested to sign on such incorrect date and time. Lack of knowledge regarding the rights of an arrested person often compel powerless people to fall prey to such antics. The main reason for such an act is to avoid future prosecution for inflicting torture and brutality that might result in the death of the arrested person.

What happens in the usual course of occasion is that, when faced with charges for torturing a person inside the lock up, the police usually pass off the memorandum of arrest as evidence to prove that they had arrested the deceased a few hours before his death and suddenly he fell ill inside the lock up and had to be taken to the hospital where he passed away. Whereas in reality the picture is always different. Perhaps the individual was arrested some twenty hours ago and tortured by the police at their leisure, and when his condition deteriorated, he was taken to the hospital as a formality so that no one could point a finger at them.

**c) Violation of section 50 A of the Code of Criminal Procedure, 1973:** Section 50 A (1) of the Code of Criminal Procedure states that every police officer or other person making any arrest under this code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or any other person as nominated by the person himself<sup>3</sup>. Thus, from here we can infer that it a duty of the police to make such disclosure and it is the right of the arrested person to let his near and dear ones know about such arrest. The main reason behind inclusion of such section within the Code is to ensure that the arrested person gets a legal help as soon as possible in conformity with section 41-D of the act.

However, in many cases of arrest, the police refrain from intimating the family about the same. Such a move helps them to inflict violence on the arrested person at their own sweet will. They are aware that if the arrestee gets any legal help, then it can go against them as the torture and brutality will eventually come to the forefront. Hence, keeping the family in dark about any

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<sup>3</sup>The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

such development is a calculative move on their part. In the case of *Prabavathy v. The State of Tamil Nadu*<sup>4</sup>, where the petitioner's husband was arrested by the police and the petitioner was not intimated about the same but later when her husband died, she was conveyed the news over a phone call, the court granted her compensation for illegal detention and custodial torture of her husband.

There are numerous similar cases in which families are not informed of the arrest and, when they learn of the person's death, they blame the police for committing custodial violence. Needless to say, the authorities very conveniently try to evade suspicion and conviction by stating that the injuries which caused the death were sustained either before such arrest or while the accused was trying to escape from police custody. A similar trend was found in the case of *Nilabati Behera alias Lalita Behara v. State of Orissa and others*<sup>5</sup> where the death of the petitioner's son was passed off by the police as the result of a supposed train accident while he was trying to escape from custody, the court gave compensation to the petitioner on the ground that her son's death was a result of custodial violence.

**d) No FIR filed against the police:** According to the National Campaign Against Torture (NCAT) annual data for 2019, the majority of people who died in police custody in that year belonged to the economically lower rung of society or to some marginalized communities. Section 154 of the Code of Criminal Procedure, 1973 gives an individual the option to file a First Information Report, hereinafter called FIR, with the officer in charge of a police station, associated with the commission of a cognizable offence. However, in cases of custodial deaths, families of victims often prefer not to file a FIR against the authorities in the fear that they might also have to face the same consequence as their kin. In those cases where FIRs are filed against a police officer for torture and brutality, the police make certain that the family members are threatened and coerced to the point where they either withdraw the complaint or are eventually forced to turn hostile to their own claims during the course of the investigation.

**e) Late reporting or non-reporting of custodial death cases to the Nation Human Rights Commission:**

In the year 1993, the National Human Rights Commission issued a series of guidelines relating to custodial death which states that if a person dies while he was either in the police custody or

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<sup>4</sup> *Prabavathy v. The State of Tamil Nadu*, W.P.No.17837 of 2008.

<sup>5</sup> *Nilabati Behera alias Lalita Behara v. State of Orissa and others*, AIR 1993 SC 1960.

in the judicial custody then intimation regarding the same must be sent to the Commission within twenty-four hours of such death by the Superintendent of Police and the District Magistrate. This must be followed by a post mortem and a magisterial enquiry, reports of which are to be sent to the National Commission within two months of the occurrence of such death. The entire post mortem procedure must be video graphed properly in order to ensure that it was done in the rightful manner and is free from any sort of fabrication. However, the main lacunae lie in the fact that no penalties are prescribed by the Commission for the failure on the part of the police to report such custodial deaths. As a result, most of the time these deaths are not even reported to the Commission within twenty-four hours. Even if they are reported, post mortem and magisterial inquiry reports are not sent on time, giving the police more time to conceal facts and cover up evidence in order to avoid conviction.

**f) Fake encounters:** Encounters are a part of custodial deaths since they take place in the custody of the police though not specifically inside a lock up. At this juncture, it is important to speak about fake encounters because in such cases the police deliberately create such situations where the public is compelled to believe that it was the accused who was at fault. To justify their stance, they frequently plant weapons and other evidences near the dead bodies to show that the deceased was either attempting to harm them or escaping from their custody, forcing the police to shoot them dead in self-defence. While there are no laws that actually authorize the police to commit encounter deaths yet many a time, they take the help of certain legal provisions that are enshrined under the Indian Penal Code and the Code of Criminal Procedure to validate their move. The most reliable sections that they often fall back upon in order to escape conviction are section 96 of the Indian Penal Code which states that anything done by a person for the purpose of private defence is not an offence, section 100 of the same act which lists the various situations under which the right of private defence can extend to causing of death of a person, section 46(2) of the Code of Criminal Procedure which authorizes a police officer to use all possible force in order to execute an arrest and also section 197(1) of the Code which states that no court can take cognizance of an offence which is committed by a public servant in the discharge of his duty. Thus, police officers being public servant also falls within the purview of this section.

### **Gufran Alam and Taslim Ansari Custodial Death Case: Linking facts with reality**

This case shall bring forth the procedural lapses on the part of the detaining authorities, right from the arrest of the deceased till their hospitalization and subsequent deaths, which cements



the suspicion that such deaths were a result of police brutality and torture inside the lock up.

In the case of Chandra Bhushan Singh v. State of Bihar<sup>6</sup>, Gufran Alam and Taslim Ansari, both natives of Ramdiha Village in Bihar, were arrested by authorities from Chakia Police Station in the Sitamarhi District at 12:30 a.m. on March 6, 2019 in connection with a theft and murder case. When their respective families arrived at the police station later, they were told that both of them had been transported to the Dumra Police Station for questioning. However, when they arrived in Dumra, they discovered that both Gufran and Taslim had been unwell during interrogation and had been transferred to a neighboring hospital, where they died during treatment. Sensing the police's action as suspicious and the deaths as an apparent result of police brutality, Manwar Ali, father of Gufran Alam filed a first information report against the station house officer of Dumra, Chandra Bhushan Singh and six other constables.

Gufran and Taslim's fates were sealed the moment they were deported to the Dumra Police Station without informing their respective families of the situation. In this case, the D.K. Basu guidelines, which is considered the Bible of a police officer in every case of arrest, were conveniently flouted. Section 50 A (1) of the Code of Criminal Procedure, 1973, which was implemented in consonance with the above-stated guidelines, mandates that every police officer who is making an arrest must inform the same along with the name of the place where the arrestee is detained to any near and dear ones of the arrested persons. However, going by the facts of this case, both the families of Gufran Alam and Taslim Ansari were kept in oblivion about their whereabouts. Since the families kept on flocking from one police station to another, it is understandable that both the deceased person did not get the chance to meet a legal representative during their interrogation which is their right as per section 41-D of the Code of Criminal Procedure. These are a few of the police's well-known techniques for keeping the outside world in the dark about what goes on inside the lockup in the name of questioning.

It is important to note here that both the accused died even before reaching the Magistrate which itself raises question with regard to the conduct of the police inside the police station. Section 55A of the Code of Criminal Procedure, 1973 states that it is the responsibility of the detaining authority to take reasonable care of the health and safety of the arrested person and section 57 mandates that every person who is arrested must be presented before the Magistrate within 24 hours of such arrest. Thus, it would not be wrong to say that the scope of section 55A of the Code of Criminal Procedure extends till the time the arrested person is not presented

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<sup>6</sup> Chandra Bhushan Singh v. State of Bihar, CRIMINAL MISCELLANEOUS No.34440 of 2019.

before the Magistrate. Hence, in this case there has been a violation of both the sections along with article 22(2) of the Indian Constitution.

Deaths of similar stature where the arrested person dies even before being taken to the Magistrate are more heinous and alarming in nature. Section 167 of the Criminal Procedure Code mandates that a person arrested cannot be detained for more than twenty four hours in police custody subsequent to which he must be presented before the Magistrate who shall decide depending upon the merits of the case as to whether the accused should be detained in police custody further or whether he should be sent to judicial custody. Hence, when such person dies within a time span of twenty hours, it definitely raises a suspicion in the minds of the public that it is a result of police torture and brutality.

The incapability of the Judicial Magistrate to institute an independent inquiry under section 176 1 (A) of the Code of Criminal Procedure, 1973 was observed in this case. This can be attributed from the report of the Bihar Human Rights Commission (BHRC) which took suo moto cognizance of the same, and ordered the Superintendent of Police and the concerned Judicial Magistrate to conduct an inquiry and submit their reports as soon as possible. In the natural course of legal proceeding, the Magisterial inquiry should have commenced immediately after the news of such death came to the notice of the Judicial Magistrate. A common trail was also observed in the Tuticorin custodial death case where the inquiry started after the order was given by the Madras High Court. Such laxities imply that although this section was inserted into the Criminal Procedure Code by an amendment in the year 2005, yet its implementation by the States have been poor. In November 2019, Human Rights Activist Suhas Chakma filed a Public Interest Litigation, *Suhas Chakma v. Union of India*<sup>7</sup>, before the Apex Court alleging that the lack of judicial inquiries into custodial deaths are the main reason for such high rate of death and disappearance of people in police custodies. The case is still going on in the Apex Court.

## **Conclusion**

What we witnessed in the Gufran Alam and Taslim Ansari custodial death case is only the tip of the iceberg. On a daily basis, there are dozens of other similar cases occurring in our country, the vast majority of which we are unaware of. It is high time for us to recognize that when the defenders of law and order become the perpetrators themselves, appropriate measures must be

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<sup>7</sup> *Suhas Chakma v. Union of India* W.P.(CrI.) No. 000354 of 2019.

taken to curb the same. Creating awareness about human rights violations and providing a proper work environment with better promotional opportunities for police officers can go a long way. However, the need of the hour is to immediately recognize deaths in police custody as prima facie murders under the Indian Penal Code. Only when there is a proper, direct and concrete law in place to deal with this type of violence can we expect things to improve, if not completely disappear.