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## **CUSTODIAL DEATH- NEED FOR REFORMS**

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### **ABSTRACT**

The Indian Constitution provides the right to life and personal liberty, custodial deaths are result of violation of these fundamental human rights. Prisons in India should provide fundamental human rights except those rights which are to be omitted as mandated by law. But it is not followed in Indian prisons. India is a member of United Nations but it has not still ratified the UN convention against torture. On an average 5 custodial deaths take place in India daily which is very high. The lack of proper laws in preventing these crimes is the main reason behind this issue. Tough anti torture bill was recommended by the law commission still it has not been passed as an Act. Some legal provisions and Supreme Court judgements provide guidelines regarding this issue from time to time. National Human Rights Commission also provides certain guidelines in case of custodial deaths. But their effectiveness in reality is still a question as many of these custodial deaths were unreported and underreported and only few complaints were registered against the officials who commit the crimes. The main reason behind this is that the government instead of punishing the officers tries to protect them. In this article let us examine the custodial deaths in India and protection available to the accused and recommendations to make these provisions effective and the need of anti torture bill.

## **Introduction**

Custodial Death in simple words can be defined as a death of a person due to any form of torture or degrading/inhuman treatment by the police officials . It can either be during the time of interrogation , investigation or otherwise. In India there are broadly two types of custody Judicial Custody and Police Custody. Judicial custody simply means that the accused is in the custody of the magistrate (that is in jail). Where as police custody means that the accused is in the custody of the police(station lock up)

Custodial death is a social evil which has been ignored by the world for ages . But after the death of George Floyd many people around the world became concerned about this issue and started raising questions. Even today his demise seems to have a huge impact on the legislature and judiciary of the United States of America. On June 8 2020 the Congressional Democrats introduced a bill regarding police misconduct. The bill was called “ Justice in Policing Act “ . This bill intended to demilitarize the police and ban chokeholds and no-knock warrants .This bill wasn’t passed as the Senate voted it down.

On March 3 2021 the House of Representatives passed the George Floyd Justice in Policing Act bill.The main aim of this bill is to mandate the use-of-force date collection on encounters by the police and prohibit, religious and racial profiling. This bill also intended to redirect the funds to community based policing programs.

In India the custodial death of Jeyraj and Fenix didn’t create a major impact like George Floyd. News channels let it be both national as well regional didn’t seem to give appropriate coverage to this incident. It was because of social media that this issue became popular and intense. In U.S.A a police reform bill , began to be discussed in their parliament only after George’s incident. But in India anti torture bill came into discussion in the year 2010 it’s self .This bill was represented in Lok Sabha in the year 2010 it’s self and it was called the Prevention Of Torture Bill 2010.

## **Prevention Of Torture Bill 2010**

According to this bill if any individual is tortured by a public servant either physically, mentally, mutation of body parts, loss of life for receiving information or making them confess can be punished under this act. They can be imprisoned for a decade .

This bill was able to pass Lok Sabha but when it reached Rajya Sabha it's progress stopped. Once this bill reached Rajya Sabha the members of this house for further consideration sent it to the Rajya Sabha Selection Committee .

This selection committee added few suggestions to the bill such as:

Elaborate the definition of torture.

Those accused who have tortured either women or children should be severely punished.

To setup an independent authority which should be capable of investigating cases related to custodial deaths and provide the adequate compensation.

After including all these suggestions this bill has been presented to Rajya Sabha multiple times but yet this bill hasn't been passed. In 2017 the law commission said that they are seriously considering this bill. But the law commission of India are clear that before implementing this bill sufficient changes have to be made in Indian Evidence Act, Indian Penal Code and Criminal Procedure Code.

### **Custodial deaths in India:**

As per the India Annual Report on Torture,2019 a total of 1731 custodial deaths comprising of 1606 Judicial custody and 125 police custody deaths were reported, the average of which is 5 deaths per day.

According to National Crime Records Bureau(NCRB) majority of the police custodial deaths (69%)were ascribed as death due to natural ailments (40%) and suicides (29%).But the NCRB eventually failed in providing the details of these reports such as whether these illness are already inherent or sudden or these illness were caused only after the assault made by the police and regarding hospitalization and medical care provided to them.

From 2015-2019, 39% of custodial deaths were reported as suicide but the accused's family members claim that they are elicited to commit suicide due to custodial torture and inhuman treatments. Only from 2014 physical assault were began to be recorded as a reason of custodial deaths and only in 6% of the total cases. According to National Campaign Against Torture(NCAT), an NGO, in 2018, 76% of the 124 deaths in police custody are imputed to

torture against accused but the NCRB'S report claimed that only 2.4% of the 85 deaths in police custody are due to physical assault .

Over 63% of the police custodial deaths are within 24 hours of arrest in the last decade according to CII reports. In 30% of the cases the post death inquiry which is mandatory have been omitted. Many states fail to provide data regarding custodian deaths to NHRC .For Instance in 2019 West Bengal government failed to provide the data . In 2019 the police custodial death reported by NCRB is 84 and NHRC is 117 which is 38% more and NCAT is 124 which is even higher

### **Landmark Supreme Court Judgements Regarding Custodial Death**

Saheli vs Commissioner of Police(1989) :- In this case the police joined hands with the Zamendaar and misbehaved with the tenant and her child. Unfortunately because of the misconduct of the police the 9 year old child lost its life. Later the S.C compensated the mother with a sum of Rs.75,000. This case is a landmark judgement , because here the government didn't pay the compensation but the police official who was responsible for the child's demise paid the compensation.

Nilabati Behera Vs State of Orissa (1993) :-In this case Sumen Behera was arrested by the police. Next day his body was found on a railway track with multiple injuries .The S.C gave a compensation of Rs.1,55,000. In this case the S.C made sure that the responsibility to give compensation laid with the state and not the police .

D.K Basu Vs State of Bengal(1997):- This is the most important S.C judgement regarding custodial death. The S.C in this case stated that custodial deaths are against human dignity. In this case the S.C gave 11 guidelines to the police officials which have to be followed by them while arresting an accused.These guidelines and rights are available to every arrested person of the nation.

1.The police official who is carrying the arrest or interrogation should carry their nametag clearly where their name and designation is available. Along with this the police department should also maintain a register which should have the details of the officer who is handling the interrogation.

2.If any police officer is arresting someone they have to maintain an arrest memo . This memo will contain the details of arrest such as time and place of arrest and signature of any witness who has seen the arrest. It should also include the counter sign of the arrestee.

3.The person detained, arrested or being interrogated in police custody such as police station, lock-up, interrogation centre has a right to have a well-wisher , relative or friend being informed as soon as possible of the arrest.

4. In case if neither a relative nor a friend is available in the district where the accused has been arrested then it's the duty of the police to mention the time and venue of arrest , along with the place of custody in a telegram and send it to the arrested person's friend or relative.

5.The arrested person should be informed about the right to inform someone about his/her arrest.

6.The arrested person has a right to meet his lawyer during interrogation. But not throughout the interrogation.

7. Generally a police control room is present in every district. Here it's the duty of the local station to send information about the arrest and the place of custody of the arrest to the control room.It's the duty of the control room to prominently display this information .It should be communicated to the control room within 12 hours of arrest.

8. The local magistrate should be given a copy of all documents of arrest, which includes the arrest memo.

9.The person arrested must have a medical examination by a qualified doctor every 2 days.

10.The person being arrested can ask for a physical examination at the time of arrest. Any minor or major injury should be recorded and specified in the inspection memo. This memo should be signed both by the arrestee as well as the arresting police officer.

11.An entry should be made at the detention place about the arrest ,name of the person informed about the arrest and all necessary details of the police officials carrying on the arrest. All this should be specified in the diary in the detention centre.

**Legal provisions against custodial violence and death:**

**Constitutional provisions:**

Article 20(1) of Indian Constitution-protection against punishment and conviction in case of Ex post facto laws,which means no person shall be charged except for law in force at the time of commission of the crime.

Article 21 provides the right to life and personal liberty ,it does not explicitly prohibit custodial violence and death but this right includes the right to be protected against physical and mental torture,thus it is against custodial death and violence. In case of *Inderjeet vs State of Uttar Pradesh* the Supreme Court held that punishment with torture element is unconstitutional. In case of *Francis Coralie Mullin vs The Administrator,union* the S.C held that the right to protection against torture is included in article 21.

Article 20(2) provides the right against double jeopardy which means no person shall be tried for a same offence more than once.

Article 20(3) provides that accused shall not be compelled to witness against himself. As per Sec 179 of IPC and Sec 161 of CrPC the accused is legally bound to state the truth to the officials, however useage of physical or mental violence for obtaining statements violates this right.

Article 22(1) states that the arrested person have the right to receive the information on grounds of arrest and he has the right to consult an advocate .

Article 22(2) provides speedy trial,as the accused is bound to be produced before the magistrate within 24 hours of arrest and for further detention the court's approval is required.

**Other provisions:**

Section 50A of CrPC provides that the police is required to inform the nominee given by the arrestee regarding the reason and place of arrest.

Section 163 of CrPC prevents officers from making any threat,inducement or offer and forbids forcing of accused to give statements against his wills under Sec 24 of the Indian Evidence Act,1872.

Section 164(4) of CrPC requires recording and signature of confessions in proper way and to be endorsed by magistrate so that it is made voluntarily

Section 348 of IPC prohibits wrongful confinement for obtaining Information.

Section 49 of CrPC states that no force more than necessary should be used to prevent the accused from escaping.

Section 50 of CrPC provides the right to seek bail in-case of arrest.

Section 55A of CrPC provides that the health and safety of the accused should be taken care by the officer who has his custody.

Section 56 and 57 of CrPC states that no person arrested without warrant shall be delayed to be produced before magistrate and in absence of order by magistrate prohibits detention for unreasonable period of time

Section 75 of CrPC requires the arresting officer effecting the warrant to tell the accused of the substance of warrant and if required he has to show it.

Section 24 of Indian Evidence Act,1872 makes confessions made under threat,promise and inducement as inadmissible.

Section 26 of Indian Evidence Act 1872,States that the confessions made during custody becomes inadmissible in absence of magistrate.

Section 376(2) of IPC states that any police officer, public servant,remand home member or hospital staff who sexually assaulted (rape)the person under his custody shall be punished with imprisonment ranging from 10 to 14 years .

### **Recommendations :**

#### **Scope of custodial deaths to be increased:**

17,146 people died in judicial and police custody in the past 10 years according to NHRC report.A study says that custodian deaths take into account only the deaths caused in prisons and lockups but many deaths happen due to strategy used by police that is they torture the accused even before taking them into official custody and also some fake encounters and claim that these injuries were caused before the arrest and many deaths happens during the transportation period from lockups and prisons to trials and the after effect of the torture cause death of many persons after their release due to serious injuries and physical and mental

humiliation caused to them these deaths go unnoticed and unrecognized. They must be taken into account while reporting the Custodial deaths.

**Media coverage should be increased:**

Even without taking into account such deaths an average of 5 custodial deaths happen in India which reflects the poor condition of our legal system in preventing these crimes. Only few lucky persons like Jeyaraj and Fenix get media attention and most of the others go unnoticed. No proper compensation is provided to the affected families and the officers who commit the crimes also don't get punishments. One of the highest form of violation of human rights is custodial violence as it violates the fundamental right to life and personal liberty guaranteed by the Indian Constitution. It is the duty of the state officers to conduct a fair trial and protect the life of prisoners but in reality these officers stand united in covering up the crimes. Government plays a major role in protecting the accused officers. Media must pay attention and sensitize this issue to make people more aware of the government's need of the hour, to protect and compensate the affected family and punish the criminals.

**Awareness should be increased:**

The highest number of custodial deaths has been recorded in Uttar Pradesh (400) and fewer custodial deaths are reported in Kerala (2). One of the reasons for this is the literacy rate and awareness among the people of their rights as the literacy rate of Uttar Pradesh is 69.72% and of Kerala is 96.2%. So awareness should be brought even to the uneducated people by conducting awareness campaigns and educating them of their rights.

**To Increase accountability:**

From 2010 to 2019, 1004 police custodial deaths were reported by NCRB of which only 472 cases were registered and out of which only 84 police officers were arrested. The accountability must be increased by registering such complaints in other police station excluding the place where the crime took place and providing security to the complainee's family from the officers who misused their powers.

**More accurate reports to be submitted:**



As police are statesmen many states fail in providing proper reports regarding custodial deaths to NHRC. For Instance in 2019 West Bengal government failed to provide the data and so the NHRC in its report repeated the data collected in 2018. This must be brought to the eyes of Central government and strict laws should be passed regarding submission of these reports after a proper investigation and state wise report should be further subdivided into district wise report and police station wise report for transparency.

**To Follow up pending cases:**

NHRC should also from time to time report the current status of pending cases against officers who were arrested under custodial deaths irrespective of the year the crime took place and it should also report the compensation provided to the affected families. NCRB must provide a detailed report of the investigation of the accused officers.

**Anti torture law must be passed:**

An Anti torture law must be passed in India. The Prevention of Torture Bill 2017 were approved only by 4 states. The required changes recommended to this law must be made and it should be passed in the parliament as soon as possible to protect the basic human rights of prisoners.

**Proper training to be provided to police officers:**

Proper training must be provided to police officers who think violence as the only means of acquiring statements from the accused. They should be taught technical and psychological methods of obtaining statements from the accused and they should also know the human rights available to prisoners and should respect and follow them.

**To increase transparency in investigation:**

An Inspection committee must be set up in every police station as an independent body and it should consist of members of NGO and advocates who can act as a check on police officials and it must also be made mandatory to set up 24 hours active camera in each police station and prison and also a camera should be specially set up near the entrance of every lock up so that the entry and exit of officials can be watched and it would help in a more transparent way of investigation.

**To pass section 114B of the Evidence Act:**

The law commission report of 1985 directed the enactment of sec 114-B. But unfortunately this bill wasn't passed as a law. Although this bill was reintroduced in 2017 this failed to become a law. Many people in the Judiciary feel that this provision is quite important and it must be informative in the Indian Evidence Act 1872. This bill raises presumptions against the police if the accused unfortunately dies during custody. So it becomes absolutely necessary to be passed as a law.

**To abide to NHRC guidelines:**

NHRC provides the following important guidelines regarding custodial deaths:

1. custodial deaths should be reported within 24 hours of its occurrence.
2. Filing of FIR is mandatory in case of custodial deaths
3. A magisterial inquiry must be conducted within 2 months and a detailed report regarding the death should be submitted.

But these guidelines are not practically followed as there is no punishment in law for non reporting. Strict laws must be brought and a proper timely inspection to be conducted regarding the effectiveness of following these guidelines.

**Conclusion:**

India being one of the world's largest democracies is unable to control custodial deaths. India still didn't ratify the United Nations Convention Against Torture which is pivotal to know. As police are statesmen and they act as bodyguards of the government they enjoy a greater immunity against their crimes ,but the government refuses to take proper action against their crimes.But the government should know that people are the ultimate authority of any democratic government and police are only public servants whose duty is to protect people. Protectors of law turn out to be its perpetrators, and the government is as thick as thieves for covering crimes of its officers. Government should stop covering up these crimes and make stricter laws for punishing the accused officers and the officers in power should never misuse their position unless they change torture and custodial deaths can't be ceased to an end.