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**CUSTODIAL VIOLENCE: CONSTANT INFRINGEMENT OF HUMAN RIGHTS; A
BRIEF DISCUSSION USING INDIAN CONSTITUTION AND INTERNATIONAL
STATUTES**

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INTRODUCTION

The prevalence of ‘custodial violence’ hasn’t been exclusively defined under procedural laws but the literal meaning is well understood wherein we divide the words into two major segments. The officials who are genuinely responsible to take care of individuals are the police authorities, judicial authorities, and other institutions. The code of criminal procedure has been visibly explained with two kinds of custody under Section 167. Section 167(1) states that when a person is detained, a maximum of 15 days should be granted to them in police custody. Such an arrest takes place in two parallel events, from the initial period of the arrest until producing him and lastly wherein the police receive the demand to produce the accused to judicial custody until their bail gets approval.

The definition hasn’t been implicitly defined under the ambit of law but there are specific institutes, research scholars, or judges who have defined the term. In further observance, the Indian Law Commission stated, “crime by a public servant against the arrested or the detained person who is in custody amounts to an instance of custodial violence.” At a specific level, Justice B.P Jeevan Reedy pointed out, “Custodial violence takes in torture, death, rape and excessive beating in police custody.” Despite undesirable circumstances under which the accused falls vulnerable to an unhealthy environment, lack of medical care and food, yet in most cases, prisoner’s death arises out of custodial violence.

Most of the time the police authorities arrest an individual without a proper warrant and due procedure. The officials try to extract relevant information from them by torturing them at the same pace. Such forms of abuse took shape of abusive languages, pestering, vicious behaviour, and denial of family members wherein legal counsel was ensured.

ANALYSIS OF DATA

Various instances of custodial deaths were brought to knowledge by different institutes. Nevertheless, the majority of death rates got conveyed by the National Crime Records Bureau that attributed illness and other naturally occurring causes. The report didn’t clear information

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relating to persistent illness and injury that happened to them due to assault while in custody or other reasons. The rampant analysis of physical assault in police custody originated in 2014 wherein 6% of the cases dealt with the subject matter. In 2019 the figures and percentages drastically reduced to 2.4% wherein 85 deaths arose due to physical assaults taking place in the custody. However, the ironic scenario focuses on the analysis carried out by the National Campaign Against Torture wherein 75% of 124 custodial deaths resulted due to assault or violence.² In the last 10 years, the reported custodial cases initiated against the police executives remained silent on the fact whether the deaths were registered or not.

RECENT ISSUES ON CUSTODIAL VIOLENCE

Custodial Violence is one of the most brutal crimes targeted against humans in frequent numbers. The incident sparked across the country after the demise of a father and son in Sathankulam town located in the state of Tamil Nadu. On 19th June 2020, P. Jeyaraj and his son Bennix were arrested for violating lockdown norms wherein they kept their shops open past the prescribed hours in the state. Initially, the father was arrested and his son was followed by the police team to the station. When his son reached the destination, he observed that the senior police officer was seen harassing his father during the late 60s. Bennix tried protecting his father by pushing aside the officer-in-charge. Both were then mercilessly tortured and harassed by the personnel. Later, they were admitted to the hospital after the heinous incident. Three hours later, the magistrate remanded them to Kovilpatti Sub jail. Until 22nd June there wasn't any news relating to the two. By the evening, Bennix died due to severe blood loss and internal and external injuries. The following day that is on 23rd June, P. Jeyaraj also died.³

A year later, a similar incident was observed in Goa wherein three members of a family got arrested by police personnel for an alleged threat. They had committed suicide after experiencing torture at the hands of police authorities. Additionally, another incident took place in the state of Haryana, where a Muslim youth was beaten to death while he was in custody. Later, the police had denied the respective allegations by stating that the death of the victim arose due to kidney failure.

² Raja Bagga, 'Existing data on custodial deaths in India fails to give a full picture' (Scroll.in, 30 November 2021) accessed <https://scroll.in/article/978919/existing-data-on-custodial-deaths-in-india-fails-to-give-a-full-picture> accessed 9 January 2021

³ Arun Janardhanan, 'Explained: How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son' (INDIAN EXPRESS, 24 September 2020) <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/> accessed 9 January 2021

VIOLATION OF FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

Custodial violence isn't just delimited to law enforcement agencies targeted against an individual but also intrudes upon human rights. The judiciary has tried balancing the scope of article 21 so that the individual's right to life isn't violated. At the time of custody. It is the state's responsibility to protect the rights of the accused. However, the concept has faded in parallel practice that focuses on both physical and mental circumstances. The common drawbacks are: the police personnel inflict inhuman treatment arising out of physical and mental stigmas. The investigating authorities often engage in shortcuts to finish the investigation process and impose vehemence to obtain an easy confession.

REMEDIES AVAILABLE UNDER THE INDIAN LAWS

There has been a lot of developmental efforts to preserve the fundamental aspect of an individual in custody. The judiciary has further increased the scope of existing FRs in several cases since the 1950s.

Under the Indian Constitution

Our constitution being the supreme document has guaranteed specific rights to the citizens of India and a few non-citizens as well. These rights have been well versed with a due guarantee under Articles 14, 19, 20, 21, and 22 with various law enforcement authorities and courts required to safeguard the laws and try to prevent any further breach that might arise.

Other protective measures laid down by the Supreme Court and Parliament

Apart from enlisted remedies deep-seated in the constitution, the Indian parliament had subsequently passed appropriate legislation, established commissions to preserve human rights infringed by custodial violence. The Protection of Human Rights Act was subsequently enforced on 28th January 1993. From a deeper understanding, Section 2 states, "Human Rights refers to the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India." The Supreme Court had specifically laid certain guidelines regarding transparency and accountability in the system relating to the arrest of an individual as observed in the case of D.K. Basu Ashok K. Johri v. State of West Bengal.

The Protection of human rights act, 1993

The act was subsequently approved by parliamentary proceedings to safeguard human beings from getting tortured by the state's organs to meet both the national and international treaties to preserve human rights. The above act provides systematic measures required to address the problems effectively and to rightfully deliver justice with higher transparency efficacy and accountability amidst the changing society.

GUIDELINES ENLISTED IN THE LANDMARK CASE OF D.K. BASU, ASHOK K. JOHRI V. STATE OF WEST BENGAL:

The court spotted the importance of various institutions responsible for an individual's arrest that takes transparency and accountability into due consideration. Therefore, a couple of requirements have been suggested by the law governing bodies for law enforcement agencies at the time of arresting an individual. Some of which are as follows;

- ❖ The police personnel should be dressed up in clear, precise, and noticeable identification tags clearly stating their designations and terminus while they are on duty to arrest any individual.
- ❖ The arrestee has evident right to inform his family members, relatives, friends, or well-wishers regarding the nature of their arrest.
- ❖ If the relatives reside in the outskirts of the district, they should be duly notified by the police authorities within 8-12 hours of the arrest.
- ❖ There should be a diary of related entries wherein the arrestee has mentioned their next friend and details of the police officials under which they are either detained or living in custody.
- ❖ For specific purposes of recording of the arrest, an arrest memo would be directed to the magistrate's office.
- ❖ The accused would not be legalized to meet their respective lawyers during the entire course of interrogation.

National human right commission (NHRC)

NHRC recognizes itself as a legislative body and was brought into existence as of 12th October 1993. Besides, The Protection of human rights act, 1993 provided its statutory basis to rightfully detail guidelines on arrest, pre-arrest, post-arrest, and measures to enforce the guidelines efficiently. All the respective states in the country were entreated to enforce NHRC's strategies.

Remedies under other Indian laws

There are specific remedies that are accessible to the public under relevant legislations that include the Indian Penal Code 1860, Code of Criminal Procedure 1973, Indian Evidence Act, 1872, etc.

REMEDIES AVAILABLE UNDER INTERNATIONAL LAWS

There are various international declarations, policies as well as conventions that hugely deal with the rights of prisoners and persons under detention. In the year 1945, India along with 50 other nations had subsequently signed the UN Charter responsible for looking after various human rights issues. The UN tried to systematically introduce systematized protocols to preserve the rights of the most vulnerable prisoners. The instance directing for human rights fortification in the present day is the Universal Declaration of Human Rights 1948, the United Nations Convention Against Torture, the European Convention of Human Rights, and Fundamental Freedom. The above act is identified as an instrument that consistently works for the common goal which is to deal with instances of custodial violence.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

The aforementioned institution was officially constituted on 23rd March 1976 wherein “any person who had been deprived of their liberty shall be treated with humanity and dignity”. Additionally, Article 7 of the aforementioned covenant forbids existing forms of abuse, inhumane, or brutal treatment by safeguarding norms to the person with that liberty that had been set for the free person.

UN STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS, 1955

After a brief period of deliberation and consultation, the United Nations in the year 1955 decided to adopt the strategy of minimum standardized ruling that aims for appropriate treatment of prisoners. The effort sought the prevention of crimes that are mostly targeted against them based on gender, religion, colour, social origin, place of birth, or status.

RIGHTS OF THE ARRESTED PERSON

Henceforth, the arrest carried out in the name of law should not be restricted to the periphery of being rational and legal but equally affected as per the procedure established by the law. There are, however, additional provisions that are expressly directed in favour of the arrested

person. The Constitution briefly recognizes the rights of the arrested person under the domain of 'Fundamental Rights' that are listed as follows:

1. Every piece of information is vulnerable to intricacies. Thus, an attempt should be enacted to prevent the wrongful exposure of information. Accordingly, Section 50 has made it a point to state that the information provided should be subjected to cross-examination before it is made accessible to the arrestee.
2. Once the relevance is pointed, the person should then be presented before the Magistrate as per Section 56.
3. One of the major points to take note of hereafter is that the individual cannot be detained under any circumstance for more than 24 hours as per Section 57.
4. Special protection norms are ensured to females (Section 53(2))
5. A proper examination by a specialized medical practitioner (Section 54)
6. Compensation provided should be lawful and the same is considered for unlawful arrest (Section 357(3) of the code)
7. Lastly, Article 22(1) of the constitution exclusively states that depending on the situation, the individual is capable of engaging in proper consultation sessions with his lawyer or legal aid without any fear or worry.

PROCEDURE FOR INQUIRY UNDER NHRC GUIDELINES RELATING TO CUSTODIAL VIOLENCE

Various attempts have been formulated in the attempt to curb the prevailing occurrences of custodial violence within the parameters of the country, the National Human Rights Commission abbreviated as NHRC that propounded a systematized guiding principle relating to the conduct of magisterial cooperation vitalized for rapid intimidation of death instances. Additionally, the Commission was instituted by an act articulated by the parliament instilled on 12th October 1993 otherwise classified as the Protection of Human Rights Act, 1993 (PHRA). In the attempt of easing the complete process required for setting forth the relevant information concerning custodial violence, the Supreme Court declared renewed guiding principle to respective governments. In the year 1993, the body presented general instructions relating to deaths as observed within its premises after which the commission would acknowledge the same within 24 hours. It was then followed with reliable evidence including videography reports, post mortem reports, and magistrate inquests. Almost 196 cases of death were registered in the commission during the timeline 1999-2000.

POWERS RELATED TO NHRC

The NHRC has timely provided powerplay of a civil code that otherwise tries for a suit under the Code of Civil Procedure and other additional matters. In inherent cases involving a breach that might have erupted, the disturbed government takes appropriate remedial measures to the victim and accordingly reminds the public servants of their rights and duties as well. Depending on the brutality, it has the integral power to initiate legal proceedings relating to the prosecution and other actions fir against the person(s) concerned.

RELEVANT LEGISLATIONS BY THE MINISTRY OF HOME AFFAIRS UP TO DATE

All the individual prisoners remained in absolute detention within the domain of Entry 4 and Second List of the Seventh Schedule of the Constitution. Therefore, the state government must rightfully accomplish and manage pertinent settings and propriety of the individuals. Additionally, the Ministry of Home Affairs has ensured administrative principles to the grouped entities. The Bureau of Police Research and Development has briefly discussed issues about Volume 66 of the Indian Police Journal.

TWO SIGNIFICANT BILLS

The requirement assigning stricter forms of punishment was suggestively sensed after the subsequent happenstance of Kanpur gangster turned politician- Vikas Dubey by UP Police Officials in conjunction with the heinous happenstance of four individuals thereafter accused unambiguously in the Hyderabad vet's rape event. At a definite level, the UN Convention aimed against Torturous practices, existing cruelty, inhuman instances, and degrading treatment thereafter prescribed in extreme forms of torture against victims relating to crimes and sought segregated data on death correlated instances in each state. The offenses causing grievous hurting sentiments extort confession being indictable under Sections 330 and 331 simultaneously in the IPC (Indian Penal Code). Likewise, the MHA had legitimately formulated the 273rd Report alongside 'The prevention of Torture Bill, 2017' suggestive of governmental familiarity combined with various state governments.

IMPERATIVE CASE LAWS

- 1) **A peculiar case was reported wherein Deepak, a 28-year-old prisoner was residing in the custody of Tihar jail, New Delhi, Case No. 4533/30/9/2015-JCD came into light as on 12.08.2015**

In due course the Commission acknowledged successive intimidation emerging on the part of the Superintendent, Tihar jail wherein the undertrial prisoner Deepak lodged his statement after which he died on 12th August 2015. Such a form of coercion shortly received the deceased being admitted in jail on 22.03.2013. A couple of months later, on 11.08.2015 he was attacked by a few inmates with an improvised sharp object in so doing resulting in solemn injury. The Commission thoroughly examined the brought up subject matter received from various state authorities thereby concluding that the deceased had died due to incessant poisoning. The case was prescribed as one relating to unusual death and homicidal occurrences. Such a dithering, irrelevant, and inattention displayed by prison authorities amounting to the life-threatening desecration of human rights.

2) The second instance taking into the case of- Inderjeet v. State of U.P

The SC took into consideration of restrictions amounting to tortures, pressurized circumstances, or infliction was considered unreasonable and unconstitutional. The above can be further extended to undertrial or convicted prisoners who aren't subjected to physical or mental restraint and instantaneously reasonable by suitable chastisement awarded by the Court otherwise amounting to human degradation.

CONCLUDING STATEMENT

Instances involving custodial violence and death cases have become normal owing to today's time and news. Such form of actions executed by police authorities has been treated at par with the day-to-day routine. However, the strangest thing that catches our attention is that the people had themselves estimated the practice as a normal routine by the police agencies. It not only creates a false impression but also creates fear in the minds of the general public in an adverse manner. Custodial violence blatantly encroaches upon human rights. Some laws have been implemented to tackle the existing brutality, but the same has neither been established nor implemented. Basic violence management is considered vital and there must be fully enforceable solutions to the same. Furthermore, there must be checks and balances sought for the smooth working of police custody. Additionally, there must be an inquiry into respective matters which are being recorded. And most importantly a free flexed atmosphere must be

created for the public to report the ongoing crimes without any worry. Thereby, such a slow process would eventually lead to a better environment for all persons accused of any crime.⁴

⁴ Diganth Raj Sehgal, 'Problems, perspective, and laws surrounding custodial deaths, a dire need of anti-torture law' (IPleaders, 11 December 2020) <https://blog.ipleaders.in/problems-perspective-laws-surrounding-custodial-deaths-dire-need-anti-torture-law/> accessed 12 January 2021