

## **CUSTODIAL OFFENCES- A CRIME AGAINST LAW AND ORDER**

*Written by Saurvi Singh*

*1st year LLM Student, Directorate of Distance Education, Kurukshetra University,  
Kurukshetra, India*

---

### **ABSTRACT**

Custodial means in the custody of someone who is responsible for taking care of someone. Recently, everyone is talking about custodial death, and all such offences that are committed in custody. Now what custody they are talking about, this custody is nothing but police custody or judicial custody. Custodial offences are not new to our society but now this offence is considered as a heinous offence by the public and national human right commission after the case of Mr Jayaraj and Mr Bennicks a father and son who died in Police custody in Tamil Nadu. A family of the deceased alleged that they were brutally beaten and killed by the police personnel. According to the media, they were arrested because of a lockdown violation and found dead the next day in police custody in Thoothukudi, Tamil Nadu. According to an Article Published in Newspaper “THE HINDU” report says that there are five custodial deaths in India daily. And in 2019 a total of 1,731 people died in custody.

“The recent death following alleged custodial torture of P Jeyaraj and his son Bennix in Tamil Nadu has put the spotlight back on the case. Justice Basu, who now heads an NGO called the National Committee for Legal Aid Services, recalls, “One day, three men approached me to represent one of their friends who used to be a part of the Naxalite movement but had disassociated himself from it and had been picked up by the police. They said they were not aware of even the police station where he had been taken... I deployed my juniors in different courtrooms, but the youth wasn’t produced in court for three-four days. We eventually found he had been kept in what was a torture house near Alipore (in south Kolkata). I posted some

people in a tea stall outside the house and they confirmed they could hear loud cries of pain from inside. I approached the magistrate to order the police to produce him in court.”

After he was brought before court, the man was let off.

Basu says the young man was not alone. Many youths with suspected Naxal links were picked up by the police across the state at the time, a large number of whom were not produced before a magistrate within the stipulated 24 hours, and several ended up dead in “encounters”. Despite two inquiry commissions set up by the Left Front government after it came to power in 1977, the truth of the killings remains unknown. “The commissions submitted their reports but they were never made public,” says CPI (M-L) Liberation leader Abhijit Majumdar, son of the Naxalbari movement leader Charu Majumdar.”<sup>i</sup>

**Keywords:** *Offence, Custody, Torture, Police*

## INTRODUCTION

In the case of *D.K Basu V. State of West Bengal, and Ashok k. Johri V. State of Uttar Pradesh*. The Supreme Court of India has prescribed 11 guidelines in respect of arrest and detention of accused. On a writ petition which is treated as PIL filled in 1986. These guidelines aimed to protect the right of the arrested person. and to reduce custodial offences. And to control the actions of police personnel in respect of arrest and detention of accused.

The Hon'ble Supreme Court, in *D.K. Basu Vs State of West Bengal*, has laid down specific guidelines required to be followed while making arrests:

I. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

II. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of

the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

III. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

IV. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

V. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

VI. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

VII. The arrestee should, where he requests, be also examined at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

VIII. The arrestee should be subjected to a medical examiner taking care of a person who is in his custody.

### ***Meaning***

According to American dictionary the word custodial: “*referring to or having the responsibility of protecting, caring for, or maintaining something or someone.*” whereas, the term offence is defined under section 40 of Indian Penal Code as “*Except in the [Chapters] and sections*

mentioned in clause 2 and 3 of this section, the word “offence” denotes a thing made punishable by this code.”

When we derived the meaning of custodial offences together, we can say that anything which is punishable by IPC is done by a person who is responsible for taking care of someone. When such offence is done by police personnel such custodial offences are called custodial offences in police custody. The torture of accused in custody by committing rape, unnatural offences, spitting on face and the most serious one in causing death of accused in the custody.

The landmark judgments are pronounced in following cases.

***Joginder Kumar v. State Of U.P and Others 1994 AIR 1349: 1994 SCC (4) 260:***

The rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously protected. For effective enforcement of these fundamental rights, Hon’ble Court issued the following guidelines:

The police officer shall inform the arrested person when he is brought to the police station of this right. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly. It was further directed that it shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have fulfilled”<sup>ii</sup>

***Hashimpura massacre case***

<sup>iii</sup>The Hashimpura massacre is an incident of mass murder which took place on or around 22 May 1987 near Meerut in Uttar Pradesh state, India, during the 1987 Meerut communal riots during March to June 1987 with a death toll of 350. It is alleged that 19 personnel of the Provincial Armed Constabulary rounded up 42 Muslim youths from the Hashimpura *mohalla* (locality) of the city, took them to the outskirts of the city, shot them in cold blood and dumped their bodies in a nearby irrigation canal. A few days later, the dead bodies were found floating in the canal and a case of murder was registered. Eventually, 19 men were accused of having performed the act. In May 2000, 16 of the 19 accused surrendered and were later released on bail. Whereas, the other three accused died in the intervening period. In 2002, the Supreme Court of India ordered that the case trial should be transferred from the Ghaziabad district court to a Sessions Court at the Tis Hazari court complex in Delhi.

On 21 March 2015, all 16 men accused in the Hashimpura massacre case of 1987 were acquitted by Tis Hazari Court due to insufficient evidence. The Court emphasized that the survivors could not recognize any of the accused PAC personnel. On October 31, 2018, the Delhi High Court convicted the 16 personnel of the PAC and sentenced them to life imprisonment, overturning the trial court's verdict''.

***Yashwant And Others v. State of Maharashtra (2018) 4MLJ (CrI)10(SC):***

“The Supreme Court on September 4 upheld the conviction of nine Maharashtra cops in connection with a 1993 custodial death case and extended their jail terms from three to seven years each. Reportedly, a bench of Justices NV Ramana and MM Shantanagoudar upheld the order and said that incidents which involve the police tend to erode people’s confidence in the criminal justice system. While enhancing the prison term of the cops, the apex court said, “With great power comes greater responsibility,”. The police personnel were found guilty under Section 330 of the Indian Penal Code which involves voluntarily causing hurt to extort confession or to compel restoration of property.”<sup>iv</sup>

## **CATEGORIES OF CUSTODIAL OFFENCES**

Custodial offences include following types of violence

- **Physical Violence** -This type of violence includes torturing accused physically by inflicting injury on him, by beating him, spitting on him, applying chilli powder, salt on their delicate parts and wounds.
- **Psychological Violence**- Violence which is caused by torturing the mental state of the accused such as abusing him.
- **Sexual Violence**- This type of violence includes harassing accused sexually like rape of accused in custody, touching his private parts in unusual way. Putting something in anus etc.



## RECOGNITION OF RIGHTS PRISONERS

According to an Article published in latestlaws.com

“The provisions for the treatment of prisoners has been recognized on international levels and are discussed under various International Instruments such as “Universal Declaration of Human Rights” (UDHR), “International covenant on Civil and Political Rights” (ICCPR), the “United Nations Standard Minimum Rules for treatment of Prisoners”, the “European convention for prevention of torture and inhuman or degrading treatment for treatment of prisoners”, “United Nations basic principles for treatment of prisoners” and “United nations convention against torture and other cruel, inhuman and degrading treatment” (UNCAT).

Even after giving so much importance to rights of prisoners by international communities and most of the states being the signatories to these international conventions, the rights of prisoners are violated in some form or another.”<sup>v</sup>

In 1983 the Supreme Court held in case of *T.V. Vatheeswaran v State of Tamil Nadu*.

“The court held that the basic fundamental rights that are provided under ‘Articles 14,19 and 21’ under Part III of the Indian Constitution are available to prisoners at all times as are given to the freemen. The court further stated that the walls of prisons cannot keep fundamental rights out. The Indian Supreme Court while deciding different cases, included various other rights for the protection of prisoners while they were in custody under ‘Article 21’ of constitution: Right to life and liberty by expanding its scope. Rights granted to prisoners under the purview of Article 21 are: Right against custodial torture and death in police lockups, Right to cruel and unusual punishment, Right to free legal Aid, Right to fair trial, Right to Speedy Trial and Rights of Inmates of protective homes.”<sup>vi</sup>

## **PROVISION IN OTHER LAWS**

### ***Article 20 of the Constitution of India:***

Article 20 contains the provisions related to rights against conviction of offences. This includes the principle of non-retrospectively (Nullum crimen sine lege) ex-post facto laws. Article 20 includes a sub article which is against double jeopardy (Nemo debet pro eadem causa bis vexari) provision against self-incrimination. Which means no person is forced to give evidence against himself.

### ***Article 21 of the Constitution of India:***

Article 21 says that No person shall be deprived of his life and personal liberty except by the procedure established by the law. And this article is also for the person who is arrested.

### ***Article 22 of Constitution of India:***

Article 22 of constitution of India contains provisions related to fundamental rights of accused person such as right to inform accused about the ground of arrest, produce accused person before magistrate within 24 hours of his arrest, laws against preventive detention laws. The objective of these provisions is somehow to prevent ill-treatment than to accused in custody.

### ***Indian Evidence Act, 1872:***

The evidence Act of India does not expressly provide provisions related to torture of a person in custody but section 25 and section 26 of Act provide provision that any confession made to a police officer in his custody is not relevant for the purpose of evidence. And section 24 also says any confession or statement is not admissible as evidence. If such confession is made under undue influence, threat and promise.

***Code of Criminal Procedure, 1973:***

Section 176 of CrPC contains provision related to custodial torture it says it is mandatory to conduct inquiry by magistrate when he receives complaint of custodial torture leading to the death of the accused. Other provisions that are related to rights of the accused persons are section 167. Section 309, section 46 and section 49, section 50 to 56 which are related to article 22 of COI.

***Indian Police Act:***

Provisions are given in section 7 and section 29 of the Police Act related to dismissal, penalty and suspension of police officers when they negligently perform their duty. And unfit for their job. In the case of D.K Basu v. state of West Bengal many police officers violate guidelines given in this case.

***Indian Penal Code, 1860:***

By the way of amendment in section 376 after controversial Mathura rape case which is related to rape of a women in police custody. Clause 1(b) is added in section 376 which penalise custodial rape by police officer.

***Judicial pronouncement:***

Supreme court in case of Sheela Barse V. State of Maharashtra prescribed right of arrested person especially in case of women. And also, a duty-bound magistrate to inform the arrested person about his rights. Also, in case of D.K Basu V. State of West Bengal it laid down 11 guidelines in respect to rights of arrested persons.



***Prevention of Torture Bill, 2017:***

A bill on prevention of torture was introduced in 2008 for the very 1st time in parliament but after reviewing the bill was sent to the selected committee for its improvement. After such an improvement bill was sent to the upper house and since then it was stuck there. The law commission of India in its 273 report again recommended the bill. The bill was again introduced in 2017 and till now it is being discussed only. Now this bill becomes a political agenda as it is promised by congress party also that they will pass this bill if they come back in power. This bill is used as a vote bank in the 2019 elections.

**NATIONAL HUMAN RIGHT COMMISSION GUIDELINES ON CUSTODIAL OFFENCES**

In order to streamline the procedure of intimating the details of custodial deaths, the National Human Rights Commission has issued fresh guidelines to all State Governments. The Commission had issued general instructions in 1993 that within 24 hours of occurrence of any custodial death, the Commission must be given intimation about it. These intimations were to be followed with Post-mortem Reports, Magisterial Inquest Reports/Videography Reports of the post-mortem etc.

However, it had been found that there was considerable delay in sending these reports, which further delayed the processing of cases of custodial violence in the Commission and the awarding of interim relief wherever prima-facie, there was reason to conclude that custodial death had taken place due to custodial violence. Of the total cases of death in police custody reported in the period 1999-2000, the maximum number of cases for which inquiry reports are still awaited are - 28 from Maharashtra, followed by 19 from West Bengal, 17 from Uttar Pradesh, 12 from Madhya Pradesh, 11 from Andhra Pradesh, 11 from Assam, 11 from Gujarat, 10 from Punjab and 9 from Tamil Nadu. On the whole, out of a total of 177 cases of death in police custody, registered in the period 1999-2000, the Commission is yet to receive the full reports in 165 cases. In the context of deaths in judicial custody, maximum reports are awaited

from Bihar – 112, followed by 89 from Maharashtra, 61 from Andhra Pradesh, 41 from Tamil Nadu, 39 from Rajasthan, 38 from Punjab. 916 cases of deaths in judicial custody were registered in the Commission during the period 1999-2000 of which reports have been received in 396 cases and are awaited in 520.

The Commission has thus now instructed that all reports including post-mortem, videography and magisterial inquiry report must be sent within two months of the incident. The post-mortem reports have to be sent in a new proforma designed by the Commission which has already been circulated to all the concerned authorities. Further in every case of custodial death, Magisterial Inquiry has also to be done as directed by the Commission and it should be completed as soon as possible but in such a way that within the two months' deadline this report is also made available.

In some cases of custodial death, after post-mortem the viscera is sent for examination and a viscera report is called for. However, the viscera report takes some time in coming and therefore the Commission has clarified that the post-mortem reports and other documents should be sent to the commission without waiting for the viscera report, which should be sent subsequently as soon as it was received.

These instructions were sent in a letter addressed to the Home Secretaries of all States/Union Territories, all Directors General of Prisons and all Directors General of Police by Shri N. Gopaldaswami, Secretary General of the Commission, on 5 January 2001.<sup>vii</sup>

## CONCLUSION

Police play a major role in administration of justice. Its duty is to protect and maintain the law and order and protect the rights of human beings but when protectors themselves become the violator of such rights then it is an alarming sign that humanity is in danger. No person should be given absolute right so that abuse of power can be done. It's a high time we need effective laws and provisions related to custodial offences. Also, an independent agency is created to

investigate the crimes committed in custody. There is also a need to do reforms in the police Act. Proper steps and measures should be taken to protect persons who are in custody.

## ENDNOTES

---

<sup>i</sup> Available at <https://indianexpress.com/article/opinion/columns/dk-basu-police-custodial-killing-encounter-6534750/>

<sup>ii</sup> Available at <https://www.latestlaws.com/adr/>

<sup>iii</sup> Available at [https://en.wikipedia.org/wiki/Hashimpura\\_massacre](https://en.wikipedia.org/wiki/Hashimpura_massacre)

<sup>iv</sup> Available at <https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis/>

<sup>v</sup> Available at <https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/>

<sup>vi</sup> Available at <https://www.latestlaws.com/articles/rights-of-prisoners-against-custodial-torture-in-india-by-shivam-jasra/>

<sup>vii</sup> Available at <https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death>