

CUSTODIAL DEATH – VIOLATION OF HUMAN RIGHTS

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INTRODUCTION

Death as a result of “Torture” in police custody is indeed one of the worst kinds of crime in society governed by the rule of law, that promise to secure its entire citizen, amongst others with justice, liberty and equality. Such cases not only pose serious threat to the orderly civilised society but also are an affront to human dignity.

The word “custody” means caring and protective care. Even applied to advisable arrest or confinement, it does not carry any ominous symptoms of cruelty during custody. No civilized law permits custodial cruelty, a brutal trait that leap out of a preserve desire to cause harm when there is no probability of any retaliation; a sense of superiority and physical power over the one who is over powered or a collective wrath of hypo censorious thinking. It is one of the worst crimes in our civilized society. Torture in custody infringed the basic rights of citizens and is an atrocity to human dignity. The torture or violation caused to the arrested sometime results in the death. The Latin maxim “salus populi est suprema lex” means the safety of the people is the supreme law and “salus republicae est suprema lex” means safety of the state is supreme law, co-exist and not only important and relevant but lies at the heart of the doctrine that the welfare of an individual must yield to the community. Action of the state must be “right, just and fair”. Using any of the torture for any kind of information would neither be “right nor just nor fair” and therefore would be impermissible being offensive of article 21.

Custodial torture is universally held as one of the cruellest forms of human rights abuse. The Constitution of India, the Supreme Court, the National Human Rights Commission (NHRC) and the United Nations forbid it. But the police across the country defy these institutions. Therefore, there is a need to strike a balance between the individual human rights and societal

interests in combating crime by using a realistic approach (Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260)

A father and son -P Jeyaraj, 58, and his son Fenix, 38 -running a mobile accessory shop in Sathankulam town in Tuticorin district were arrested by some policemen allegedly for keeping the shop open past permitted hours. Tamil Nadu has imposed a strict lockdown to curb COVID-19.

The duo was taken to the police station where, as has been alleged by the family members, they were brutally assaulted. A few days later they were pronounced dead in jail. Hence, section 176 Criminal Procedure Code was amended and a special procedure created for investigating custodial deaths.

RATE OF CUSTODIAL DEATHS

On average, 96 persons die in custody every year. According to the India Annual Report on Torture 2019, there were a total of 1,731 custodial deaths in India. Out of those, 1,606 people died under judicial custody and 125 people died under police custody. This works out to almost five such deaths daily. “Out of the 125 deaths in police custody, Uttar Pradesh topped with 14 deaths, followed by Tamil Nadu and Punjab with 11 deaths each and Bihar with 10 deaths,” said the report published by the National Campaign against Torture (NCAT).

This year alone, in the seven months up to July 2020, the National Human Rights Commission, India (NHRC) reported 914 deaths in custody, 53 of these in police custody. As per their data, 714 people were reported to have died in police custody in cases registered between 2013-14 and 2017-18. In the last 10 years, the majority (69%) of 1,004 deaths in police custody have been attributed to either illness or natural causes (40%), or to alleged suicide (29%), in National Crime Records Bureau data.

Details on whether deaths by illness are due to a prolonged or sudden illness, or whether hospitalization is linked to conditions/ circumstances in custody, or due to assault in custody,

are not provided in the NCRB's annual Crime in India reports, the key central government database.

More deaths by suicide in police custody have been reported over the past decade, with 36% reported as suicides during 2015-2019. In some cases, however, families have alleged foul play, or that suicides were prompted by custodial torture, a review of media reports suggests.

NUMBER OF CASES REPORTED

Physical assault by police has been recorded only from 2014 onward and in just 6% of cases. In 2019, only 2.4% of the 85 deaths in police custody were attributed to assault by police in the report for that year. However, 76% of 124 deaths in police custody documented during the same year by the NGO platform National Campaign against Torture were attributed to torture or foul play.

The law requires that every death in custody be enquired into individually. Crime in India data on inquiries into death in police custody, however, does not specify if one person died in a given case or more, which leads to some discrepancy in the records. For instance, in the case of the two traders P Jayaraj and J Bennicks who died in police custody in Thoothukudi, Tamil Nadu, in June, one case pertains to two deaths.

Our review of 124 such cases from 2019 compiled by National Campaign Against Torture shows that 97% of the cases related to the death of one person. However, since 2017, 255 persons have died in police custody but 144 cases have been registered in this regard, per Crime in India data. (84 police personnel have been arrested, and charge sheets have been filed in 56 cases.) For the purpose of this story, we have worked with the presumption that each case pertains to one death.

This second and concluding part of our series on deaths in police custody reveals non-compliance with mandatory post-death inquiry processes in 30% of cases, and gaps and ambiguity in Crime in India data on reasons for and enquiries into such deaths.

In India where rule of law is inherent in each and every action and right to life and liberty is prized, fundamental right takes highest place amongst all important rights, instances of torture and using third degree methods upon suspects during illegal detention and police remand casts a slur on the very system of administration. Human rights take a back seat in this depressing scenario. Torture in custody is at present is treated as an inevitable part of investigation. Investigators retain the wrong notion that if enough pressure is applied then the accused will confess.ⁱ The former Supreme Court judge, V.R. Krishna Iyer, has said that custodial torture is worse than terrorism because the jurisdiction of the State is behind it.ⁱⁱ

DATA ANALYSIS

Table: 1. Gender wise Distribution

Gender	Convicted		Under Trail		Police		Mental Hospital		Total	
	n	%	n	%	n	%	n	%	n	%
Male	48	90.6%	47	95.9%	1	50.0%	20	60.6%	116	84.7%
Female	5	9.4%	2	4.1%	1	50.0%	13	39.4%	21	15.3%
Total	53	100.0%	49	100.0%	2	100.0%	33	100.0%	137	100.0%

The above table shows gender wise distribution of custodial deaths. Out of total 137 deaths, 116 (84.7%) were males and 21 (15.3%) were females. The Z-test for significance of difference in proportion indicates that the male custodial deaths are significantly higher than the female custodial deaths ($z=11.3$, $p<.001$).

Figure 1: Gender wise distribution of custodial death

Gender wise Distribution of custodial deaths:

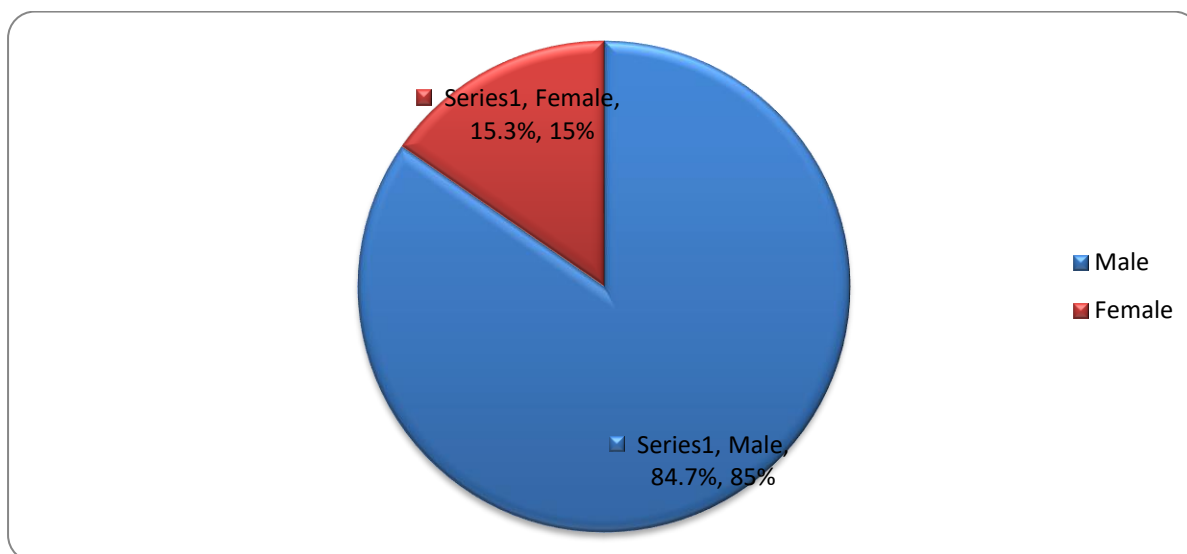


Table 2: Year- wise Distribution according to Custodial death and cases registered

Year-wise Distribution according to Custodial deaths and Cases registered

Year	Deaths in Police Custody	Cases registered		Police Charge sheet	Personal
		n	%		
2015	97	33	34.02%	28	
2016	92	25	27.17%	24	
2017	100	62	62.00%	27	
2018	70	44	62.86%	13	
2019	85	38	44.71%	16	

Chi-square for trend was applied to the year wise custodial deaths. The Chi-square test reveals that there is no significant difference in the number of custodial deaths from 2015 to 2019 (Chi-square = 6.428, DF=4, p =0.169)

Figure 2: Year wise custodial death registered

Year wise Distribution according to Custodial deaths and Cases registered:

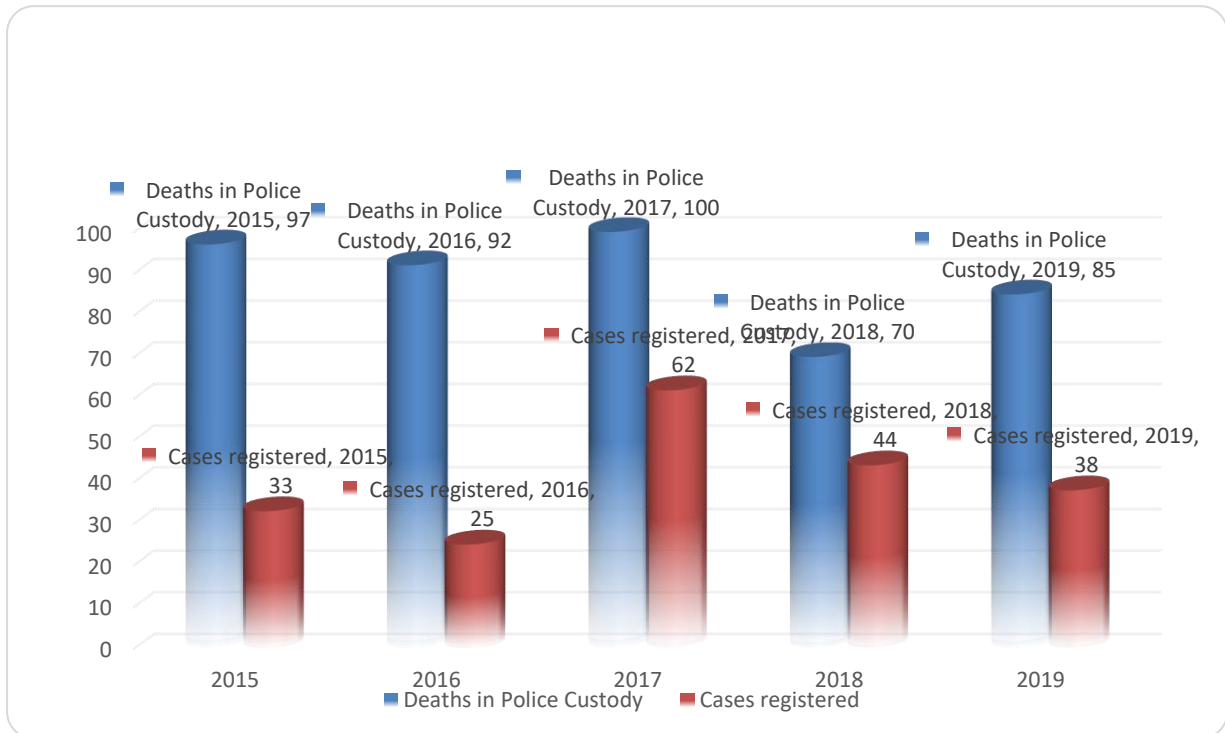


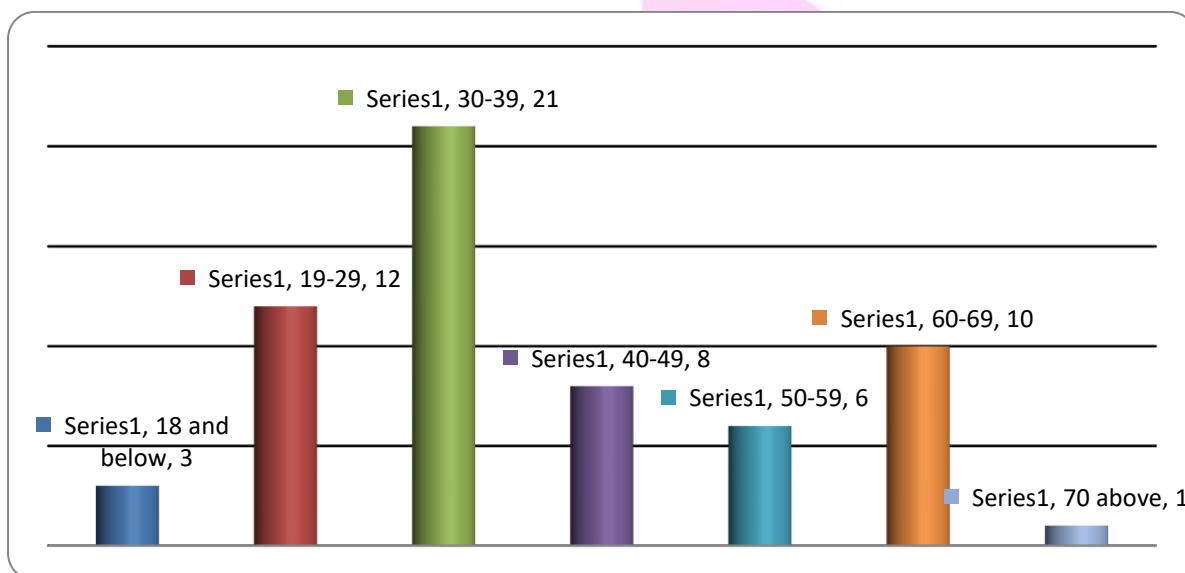
Figure 3: Age-wise distributions of custodial deaths

Age-wise distribution of custodial deaths

Age group	Frequency	%
18 and below	3	4.92%
19-29	12	19.67%
30-39	21	34.43%
40-49	8	13.11%
50-59	6	9.84%
60-69	10	16.39%
70 above	1	1.64%
Total	61	100.00%

The above table shows distribution of custodial deaths according to age in years. The number of custodial deaths are significantly higher in age groups 19-29 and 30-39 (Chi-square = 30.230, df=6, p-value<.001)

Figure 4: Age-Wise Distribution of Custodial Deaths



Responsibility: The police department is responsible for custodial deaths. The reasons for the rise in custodial deaths are manifold. It is the responsibility of the police to look after the health and safety of a detained person under custody. The Human Rights Commission must be informed within 24 hours in the case of custodial death and 48 hours in an encounter killing.

Reasons:

1. Deaths due to assault - Only in 2014 did physical assault by police begin to be reported as a cause of death in police custody. In the last six years (2014 to 2019), 33 persons (6.1% of the 537 who died in police custody) died due to injuries sustained during custody due to physical assault by police, according to Crime in India reports. These numbers may be higher if the deaths due to illness/ hospitalization.

2. Mandatory inquiries foregone- Mandatory judicial inquiries are critical in identifying reasons for deaths in police custody, but are not conducted in every case, experts said. The Crime in India reports also do not specify how the cause of death was ascribed, or which authority certified the stated cause in cases where enquiries were not ordered, or were ordered but not conducted, or were conducted but not completed in the same year. Many cases of custodial deaths are lodged as suicides.

3. Poor health facilities in prisons - The conditions in jails pose a health risk for prisoners, noted the India Justice Report (IJR) 2019. There should be at least one medical officer for every 300 prisoners and in central prisons one doctor should always be available, as per the Model prison Manual 2016. Twelve of the 20 states and union territories (UTs) studied in the report had a shortfall of 50% or more medical officers.

LANDMARK JUDGEMENTS ON CUSTODIAL DEATH

1. 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 be recognising and scrupulously protecting. 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 been complied with.

2. *J. Prabhavathamma v/s The State of Kerala & Others WP(C). NO. 24258 OF 2007 (K) AND CRL. R.P.2902 OF 2007*

The two serving police personnel were awarded the death sentence by a CBI court, after hearing the case for over a decade, in Thiruvananthapuram, over the death of a scrap metal shop worker, who the court believes was murdered in custody. While sentencing the two, Judge J Nazar had said: “This is a brutal and dastardly murder by accused (number) one and two... The acts of the accused persons would definitely adversely affect the very institution of the police department... If the faith of the people in the institution is lost, that will affect the public order and law and order, and it is a dangerous situation.

3. *Munshi Singh Gautam v State of Madhya Pradesh, Appeal (Crl.) 919 of 1999*

Summarizes their grief concern about this problem of torture in Indian prisons by police. The supreme court stated that:

“The dehumanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system. The concern which was shown in Raghbir Singh case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in the cases of Bhagwan Singh v State of Punjab, Pratul Kumar Sinha v State of Bihar, Kewal Pati v State of UP, Inder Singh v. State of Punjab, State of MP v Shyamsunder Trivedi and the by now celebrated decision in the landmark case of D K Basu vs. State of West Bengal seems ‘not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody.’”

4. *Yashwant and Others v. State of Maharashtra (2018) 4MLJ (Crl)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.

5. *D.K. Basu Versus State of West Bengal (1997 (1) SCC 416)*

The Court issued a list of 11 guidelines in addition to the Constitutional and Statutory Safeguards to be followed in all cases of arrest and detention. The guidelines are as follows: –Details of all personnel handling the interrogations of the arrested person must be recorded in a register. a memorandum of arrest at the time of the arrest should be prepared. It must also be signed by the detainee and must contain the time and date of the arrest. Police must notify a detainee's time, place of detention, and place of custody. Police of the affected area telegraphically within the period of 8 to 12 hours after the arrest. An entry must be made in the Case Diary at the place of detention.

The "Inspection Memo" must be signed by both the detainee and the arresting police officer and a copy must be provided to the detainee. The detainee must undergo a medical examination by a trained physician every 48 hours while in custody.

Copies of all documents, including the arrest memo, must be sent to the Magistrate for registration.

Information about the arrest and the place of custody of the arrested, within 12 hours after the arrest and in the Police Control Room Board, must be displayed on a visible notice board.

REMEDIES AGAINST CUSTODIAL TORTURE

Constitutional Safeguard: It has been held in a catena of judgments that just because a person is in police custody or detained or under arrest, does not deprive of him of his basic fundamental rights and its violation empowers the person to move the Supreme Court under Article 32 of the Constitution of India.

Article 20 of the Constitution of India: Article 20 primarily gives a person the rights against conviction of offences. These include the principle of non-retroactivity of penal laws (Nullum crimen sine lege) ‘*No crime, no punishment without a previous penal law*’, **Article 22 of the Rome Statute of the International Criminal Court** i.e. ex-post facto laws thereby making it a violation of the persons fundamental rights if attempts are made to convict him and torture him as per some statute.

Article 20 also protects against double jeopardy (**Nemo Debet Pro Eadem Causa Bis Vexari**) *No one ought to be twice troubled or harassed [if it appears to the court that it is] for one and the same cause* This Article most importantly protects a person from self-incrimination. The police subject a person to brutal and continuous torture to make him confess to a crime even if he has not committed the same.

Article 21 of the Constitution of India: This article has been understood in the Indian judiciary to protect the right to be free from torture. This view is held because the right to life is more than a simple right to live an animalistic existence. The expression “life or personal liberty” in Article 21 includes a guarantee against torture and assault even by the State and its functionaries to a person who is taken in custody and no sovereign immunity can be pleaded against the liability of the State arising due to such criminal use of force over the captive person. (*D.K.Basu v. State of W.B, (1997) 1 SCC 416*)

Article 22 of the Constitution of India: Article 22 provides four basic fundamental rights

with respect to conviction. These include being informed of the grounds of arrest, to be defended by a legal practitioner of his choice, preventive detention laws and production before the nearest Magistrate within 24 hours of arrest of the person. Thus, these provisions are designed to ensure that a person is not subjected to any ill-treatment that is devoid of statutory backing or surpasses prescribed excesses.

OTHER STATUTORY SAFEGUARDS:

Indian Evidence Act, 1872: A confession to police officer cannot be proved as against a person accused of any offence (Sec. 25 Evidence Act) and confession caused by threats from a person in authority in order to avoid any evil of a temporal nature would be irrelevant in criminal proceedings as, inter-alia, provided in Sec. 24. Thus, even though custodial torture is not expressly prohibited by law in India, the evidence collected by illegal means, including torture is not accepted in courts.

Code of Criminal Procedure, 1973: Sec. 46 and 49 of the Code protect those under custody from torture who are not accused of an offence punishable with death or imprisonment for life and also during escape. Sec. 50-56 are in consonance with Article 22. Sec. 54 of the Code is a provision that to a significant extent corresponds to any infliction of custodial torture and violence

Indian Police Act: Sections 7 and 29 of the Act provide for dismissal, penalty or suspension of police officers who are negligent in the discharge of their duties or unfit to perform the same. This can be seen in the light of the police officers violating various constitutional and statutory safeguards along with guidelines given.

Indian Penal Code (IPC), 1860: After the controversial (*Mathura Rape case (1979) 2 SCC 143*), an amendment was brought about in Sec. 376 of the IPC. Sec. 376(1)(b) penalises

custodial rape committed by police officers.

This was a welcome change made to the section in question as it finally condemns the acts of police officers who take advantage of their authority. Sections 330, 331, 342 and 348 of the IPC have ostensibly been designed to deter a police officer, who is empowered to arrest a person and to interrogate him during investigation of an offence from resorting to third degree methods causing 'torture'.

CONCLUSION

India should ratify the UN Convention against Torture: It will mandate a systematic review of colonial rules, methods, practices and arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.

It will also mean that exclusive mechanisms of redress and compensation will be set up for the victim besides institutions such as the Board of Visitors.

Police Reforms: Guidelines should also be formulated on educating and training officials involved in the cases involving deprivation of liberty because torture cannot be effectively prevented till the senior police wisely anticipate the gravity of such issues and clear reorientation is devised from present practices.

Access to Prison: Unrestricted and regular access to independent and qualified persons to places of detention for inspection should also be allowed.

CCTV cameras should be installed in police stations including in the interrogation rooms. Surprise inspections by Non-Official Visitors (NOVs) should also be made mandatory which would act as a preventive measure against custodial torture which has also been suggested by Supreme Court in its landmark judgment in the DK Basu Case in 2015.

Supreme court guideline in a landmark judgement of “D.K Basu vs State of West Bengal:

The Hon’ble SC has also laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention. These guidelines are popularly known as “**D.K Basu guidelines**”ⁱⁱⁱ are follows:

1. 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 designation.
2. The police officer carrying out the arrest of a person must prepare a memo of arrest and it must be attested by at least one witness.
3. A friend or relative or another person, known to the arrestee or has an interest in his/her welfare shall be informed as early as possible about the arrest.
4. If the next friend or relative of the arrestee lives outside the district or town, they must be informed by the police through ‘legal aid organization’ telegraphically, within 8 to 12 hours during the arrest.
5. The arrestee must be instructed about the right to have someone informed about his/her arrest or detention as soon as he/she is put under arrest or is detained.
6. An entry must be made in the diary regarding the arrest of the person.
7. On request of the arrestee, he/she should be examined at the time of the arrest.
8. The arrestee should be subjected to medical examination within 48 hours during his detention.
9. All documents including the memo of arrest should be sent to the concerned magistrate.
10. The arrestee may be permitted to meet his lawyer during interrogation.

11. A police officer causing the arrest shall provide 'information regarding the arrest' and 'place of custody' of arrestee within 12 hours of affecting the arrest to the police control room.

Conclusion is drawn, that there is eminent need to bring changes in criminal justice administration so that state should recognize that its primary duty is not to punish, but to socialize and reform the wrong doer and above all it should be clearly understood that socialization is not identical with punishment, for it comprises prevention, education, care, rehabilitation within the work of social defence. An overview of the legal framework governing the payment of compensation to victims of crime in India unmistakably reveals that law in India is fragmentary and inadequate to compensate victims of crime. Further it leaves it to the sole discretion of court to pass compensatory orders.

The criminal and penal justice in India, which ensures the protection of the rights of the accused both Constitutional and Statutory and which is dominated by the idea of reformation and rehabilitation of offenders. The Indian Rights Jurisprudence regards any form of torture, physical or mental, or any type of cruel, inhumane, or degrading treatment to a person in jail as offensive to human dignity enshrined in Art 21 of the Indian constitution.

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2. Rajasthan Kisan Sangathan v. State of Rajasthan. AIR 1989, SC 1087.
3. D.K. Basu v. State of W.B., AIR 1997 SC 610.
4. Sanjay Chandra vs. C.B.I, AIR AIR 2012 SC 830.
5. Kamalapati v. State of West Bengal AIR 1979 AIR 777, 1979 SCR (2) 717.
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7. M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548.
8. State of Maharashtra v. Manubhai Pragaji Vashi, (1995) 5 SCC 730.
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10. Prem Shankar v. Delhi Administration, AIR 1980 SC1535.
11. Munshi Singh Gautam v State of Madhya Pradesh, Appeal AIR 1999.
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13. Hussainara Khaton v. Home Secretary, State of Bihar, AIR 1979 SC 1360.
14. Chief Inspector of Mines v. K.C. Thapper, AIR 1961 SC 883.
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ENDNOTES

ⁱ Asian Human Rights Commission, INDIA: Government of Kerala must criminalise torture to prevent custodial deaths, [http://www.ahrchk.net/statements/mainfile.php/2006state ments/688/](http://www.ahrchk.net/statements/mainfile.php/2006state%20ments/688/)(Visited on January 23, 2010)

ⁱⁱ . The Hindu, Custodial Torture Worse than Terrorism, <http://www.thehindujobs.com/thehindu/2003/07/27/stories/2003072703510500.htm> (Visited on January 23, 2010)

ⁱⁱⁱ . D.K. Basu v. State of W.B., AIR 1997 SC 610.