

# Alarming Increase Death in Custodial Death in India: Legal Analysis

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## Abstract

Custodial death is not a new concept, especially in India, where it has become a phenomenon since India's rule at the hands of the British. Police brutality and violence has increased exponentially in the last four to five years. This situation shows that there is no law in our country's judicial system to punish officials by "fulfilling their duties" for committing acts of violence and torture. Police violence often results in serious injury to defendants, and police must be informed to use appropriate force to prevent such incidents. The media's perception of the defendants is also a factor in monitoring the violence. The death of George Floyd due to police brutality in the USA sparked a new "Black Lives Matter" movement. The custodial deaths of Jayaraj and Bennix in Tamil Nadu have outraged the public, with calls for adequate measures to prevent police brutality. These incidents highlighted the lack of anti-torture laws in India and called for action to prevent such incidents.

**Keywords:** custodial death, brutality, anti-torture, police torture

## Introduction

Death in custody is when the accused dies before trial or after sentencing. The deaths occurred as a result of direct or indirect police actions during detention. It includes deaths not only in prisons, but also in hospitals or by private, police or other vehicles. Death in care can be divided into three types:

1. The death occurred in police custody
2. Death occurs in judicial proceedings.
3. The death occurred in the custody of the military or military personnel.

Deaths in custody may result from natural causes unrelated to the crime committed by the police. For example, the perpetrator or defendant dies due to illness. But problems arise when police intervene in a death in custody.

This is also a type of death care. It is very difficult to determine the responsibility of the police and prove their guilt because all the evidence is in the hands of the police. Viewing violence is considered one of the most serious human rights violations. Indian law guarantees the person's right to life and liberty and prohibits torture to extract a confession from the accused. Indian laws stipulate the security of criminals and suspects in the police and judicial system, but authorities such as the police violate these laws, interfering with and participating in monitoring torture and abuse.

## Literature Review

### 1. Baidyanath Mukherjee and Jayshree Mishra "Custody Deaths in India-Analysis"

In this article the authors discuss the serious and alarming issue of custodial deaths in our world like India. This article attempts to examine various sections of the Constitution of India that provide fundamental rights to all prisoners. This article also examines various jurisdictions and compensation for victims as important mechanisms; however, unlike other legal systems, the Indian Constitution does not directly authorize the right to compensation.

### 2. Rakshit Ranjan "Redemptive Death and the Role of Justice – A Criticism."

The author of this article discusses executions and judicial decisions passed by the Supreme Court of India. The judiciary is responsible for upholding the Constitution and the provisions that protect our interests. He must work, obey the law, and do the right thing regardless of external pressure. In this article, the author seeks to explore the role of the courts in capital punishment and what factors lead society to accept this form of evil.

### 3. Rangita Chowdhury "Preventing death and abuse in care"

In this case study, the author discusses abuse of care, including due process laws and protections against abuse. The authors also discuss issues that require further solutions.

## Research Question:

1. What are lack of provisions for protection of prisoners against custodial death and torture?
2. What are reasons for custodial death?
3. What was role of nhrc for protecting against custodial death and torture?

## Research Objective:

1. The research paper aims to through light on the issue on the increasing number of death in custody.
2. The right to have a protection for prisoners against custodial torture done by the police.
3. To provide solution for to reduce a custodial death

## Research Methodology

This methodology adapted for the purpose of this research paper is doctrinal method involves the analysis of the statutes, case laws existing secondary information accessed from various sources such as books, articles, journals, websites etc. this is a qualitative research. Books and research papers related to topic has been heavily replied upon as secondary sources of information.

The references has been included at the end for your kind perusal

## Critical Analysis

Most of the time, detention and arrest are considered different. Imprisonment is for self-defense purposes based on the concern that it will harm people.

The police must bring the suspect before a judge within 24 hours after taking him into custody.

In police custody, the accused is arrested by the police, but in judicial custody, the accused is arrested by the Magistrate of the concerned district.

The authorized police officer cannot investigate the defendant during the judicial process, except for the facts presented to the court, unless the investigation is approved by the court.

### Supervision and Judiciary under crpc in India

There are some provisions in Crpc regarding jurisdiction and supervision of persons. According to Article 57 of the Criminal Code, the police cannot detain a person for more than 24 hours. If circumstances arise that require the suspect to be detained for more than 24 hours, the officer must request special permission from the judge in accordance with section 167 of the crpc.

Articles 167(2), 209(b) and 309(2) give the court the authority to detain the defendant. All three episodes take place at various stages of the criminal case. Detention under Section 167(2) of the CrPC affects the initial stage of the investigation for further investigation which may involve police or judicial proceedings. Detentions under Article 209(b) once the judge decides the case, the provisions of the CrPC are available; the judge will keep the defendant on guard until the end of the case. Section 309(2) deals with the post-verification stage where the person can only be referred to justice.

The detention period will not exceed 24 hours in order to prevent the defendant from engaging in criminal behavior. If the investigation cannot be completed within 24 hours, the suspect must be handed over to the judge. The Supreme Court cannot extend the referral period for more than 15 days.

Section 167(2) provides that in crimes that are not punishable by life imprisonment, death or imprisonment of up to 10 years, the judge may sentence the defendant to imprisonment for up to 60 days. If a crime is committed that requires life imprisonment, death, or imprisonment that may last 10 years or more, the judge will sentence the person to imprisonment for up to 90 days. If the detention period is exceeded, the suspect will be released on bail.

### Domestic cases associated with custodial death

#### *Joginder Kumar v. State of U.P and others, 1994*<sup>1</sup>

In this case, the court noted that the rights under Articles 21 and 22(1) of the Constitution must be recognized and protected. The courts have issued some guidelines to ensure the protection of these rights.

1. When the detained person is taken to the police station, the police officer must inform the detainee about his rights.
2. An entry should be kept in the logbook containing information on who was notified of the suspect's arrest.
3. Section 21 and Section 22(1) should be recognized and implemented.
4. The judge will determine whether the officers meet all requirements.

This landmark decision raises an important issue that will be beneficial if implemented correctly. The importance of the order is that it recognizes people's fundamental rights and human rights and provides a way to protect them.

### Tamil Nadu Tutorin's case

This is worse than some of the worst crimes ever committed in India. The father (P. Jeyaraj) and his son (Fenix), who own a mobile phone shop at Sathankulam in Tuticorin district, were arrested hours later for illegal activity. COVID19 has been effectively eliminated in Tamil Nadu due to strict lockdown. The family said they were taken to the police station and subjected to severe harassment. They were declared dead after being detained for a few days. After this incident, many politicians, celebrities and people from

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<sup>1</sup> *Joginder Kumar v. State of U.P and others*, 1994 AIR 1349, SCC (4) 260

my country commented on Twitter and called on the government to punish the perpetrators. The offender is eventually suspended or removed.

### **Vikas Dubey Encounter Case**

Vikas Dubey was a wanted criminal who was killed by the police while trying to escape from police custody. Despite the police's statement, this behavior caused public reaction. However, the authorities assured the court that the terrorist was killed in the encounter.

### **Violation of Rule of Law**

- Article 20(1): This article provides that no person shall be convicted of any offense other than trespassing the law during the commencement of the law. Therefore, the law prohibits penalties greater than those specified in the law for the crime.
- Article 20(3) prohibits a person from being forced to give evidence in court. This is a very important law because it prevents defendants from making confessions if they are subjected to pressure or torture.
- Under Article 161 of the Criminal Code, the police have the right to question the accused. When the police forcefully obtain information from the defendant during the investigation, it is called forced statement. The obligation to give evidence violated Article 20(3) and was therefore disregarded.
- Section 163 of the Criminal Code 1973: This section of the Criminal Code 1973 prohibits an investigating officer from using threats or other pressure to obtain a confession from an accused person and using it as evidence against him.
- Section 24 of the Indian Evidence Act, 1872: Section 24 of the Indian Evidence Act, 1872 provides that any statement made by the accused under pressure, promise or inducement of the investigating agency will be recognized in court. No one will be accepted. This section is designed to prevent the defendant from making a confession against his will.
- Section 164(4) of the Code of Criminal Procedure, 1973: This section requires the criminal complaint to be signed, duly recorded and approved in writing by the Governor to whom the request is made.
- Section 348 of the Indian Penal Code, 1860: Section 348 deals with unlawful imprisonment and prohibits such imprisonment for obtaining confession. Imprisonment is a crime and the offender will be fined and imprisoned for up to 3 years.
- Article 46 of the Criminal Code, 1973: This section provides that the accused cannot be subjected to torture until death unless he is accused of a crime punishable by life or death.

### **Laws penalizing the offence of custodial death in India**

As the number of deaths of caregivers has increased in recent years, there is a need for strict new laws to deal with deaths of caregivers. However, there are some laws in the Constitution that punish the crime of death in custody.

1. Section 302 of the Indian Penal Code (IPC): If a police officer is responsible for the death of a prisoner in custody, he will be charged with murder and punished under Section 302 of the Indian Penal Code.
2. Section 304 of the Indian Penal Code: According to Section 304 of the Indian Penal Code, the police can be punished for "culpable homicide not amounting to murder". Section 304A also applies if death in custody is caused by police negligence.

3. Section 306 of the Indian Penal Code: Section 306 of the Indian Penal Code deals with penalties for suicide. If it is determined that the suspect committed suicide in custody and the police committed suicide; He will then be punished under Section 306 of the IPC.
4. Section 330 of the Indian Penal Code: It was observed that the police resorted to violence and torture to extract confession and the accused was seriously injured in the process. Section 330 of IPC deals with punishment for causing harm.
5. Section 331 of the Indian Penal Code: The accused suffered grievous injuries in custody; this is equivalent to punishing police officers who intentionally cause serious injury.
6. Code of Criminal Procedure (CrPC) Section 176(1): Section 176(1) empowers the Magistrate to hold an inquiry into the cause of death; when death occurs in care
7. Section 176(1) of the Code of Criminal Procedure: If a person dies, disappears or if a rape is committed on any woman while the accused is under custody, an investigation will be launched and an inquiry would be held either by the Metropolitan Magistrate or Judicial Magistrate depending upon the jurisdiction of the offence committed.
8. Section 7 of the Indian Police Act: Section 7 of the Indian Police Act allows a senior police officer to remove or dismiss a police officer if he neglects his duty.
9. Section 29 of the Indian Police Act: Section 29 contains provisions to punish police officers who neglect their duties. Penalties include imprisonment for up to three months with or without hard labor, with a maximum term of three months.

### Statistics of custodial deaths in India

The countrywide Human Rights Commission (NHRC) recently posted a file on deaths in custody among 2021-2022. According to the country wide Human Rights Commission, 2,150 deaths occurred in judicial custody, even as a hundred and fifty five human beings Died in police custody.

Uttar Pradesh has the highest number of deaths in the judicial custody (448).

- While the highest number of deaths in the judiciary is seen in Uttar Pradesh, Maharashtra is included in the list of the dead (29)
- The National Human Rights Commission announces the data of deaths in the judiciary in the country . 5 years ago Number of prisoners killed: 1940, 1696, 1933, 1782, 1761; in 2020-21, 2019-20, 2018-19, 2017-18, 2016-17 respectively.
- Of the total 9,112 people who died in care in the last five years, only 21 people died in care deaths in care deaths. These are very worrying statistics because they show that best discipline is applied in only 0.23% of all death care cases.

The 2020 report of the National Crime Records Bureau (NCRB) also provides some statistics on deaths in custody.

- From 2000 to 2020, 1,888 caregiver deaths were reported nationwide. Lawsuits were brought against police in 893 cases of deaths in custody, but only 358 officers were charged and only 26 were convicted.
- Although only 26 police officers have been convicted in the past 20 years; however, NCRB data shows that 96 people were arrested between 2017 and 2020.
- According to NCRB data, 69% of people who died in police custody between 2010 and 2020 died due to illness (40%) or suicide (29%). Pain and suicide are considered causes of death

- The number of suicides increased significantly between 2015 and 2019. Currently 36% of deaths in police custody were due to suicide.
- Crime statistics are available since 2014 but only account for 6% of all incidents. However, it was observed that the police used physical violence.
- In India, death in custody can mean death in police custody or death in judicial custody while a person is being convicted or sentenced. The National Human Rights Commission of India reported 2,152 deaths in judicial custody and 155 deaths in police custody in the financial year 2021-2022 cases.
- According to a report published by the National Campaign against Torture (NCAT), 1,606 people died in the judiciary and 125 police officers died in 2019. On July 26, 2022, Prime Minister Home Minister Nityanand Rai, while replying to a question in the Lok Sabha, announced that India reported 4,484 deaths in fiscal 2020.

The country wide file Crime Bureau (NCRB) file of 2020 additionally provided a few stats related to custodial deaths.

- From 2000-2020, 1888 custodial deaths have been reported all around the country. In 893 cases pertaining to custodial deaths, cases were registered against policemen, but only 358 police officers were charge-sheeted and only 26 of the policemen were convicted.
- Only 26 police officers have been fired in the last 20 years; however, NCRB data shows that 96 employees were arrested between 2017 and 2020.
- According to NCRB data, 69% of deaths in police custody between 2010 and 2020 were due to illness (40%) or suicide (29%). Pain and suicide are considered causes of death.

### **Reason for rising custodial deaths**

Statistics from the National Human Rights Commission show that deaths in custody continue to rise. This is a troubling situation because every human being has the fundamental right to life under Article 21 of the Constitution of India and if the authorities violate their duty to protect life. According to NCRB's 2018 prison report, 149 inmates died as a result of crime. Some deaths are unknown because some states do not provide detailed information about deaths.

1. Most deaths in nursing facilities are due to suicide. However, it is unclear whether the prisoners committed suicide or were subjected to further torture and abuse.
2. The mental health of prisoners is completely ignored, and these prisoners do not have the mental capacity to cope with the stress or trauma they experience. The environment inside the prison is poor, resulting in fights not only between inmates but also between temporary inmates, and medical services for inmates are also poor.
3. Physical injuries only result in serious psychological injuries and affect the mental health of prisoners. This is a fundamental right that government authorities must respect to protect the fundamental right to life.
4. One of the most important reasons for the increase in prison deaths is that the state has granted excessive powers to the police. Section 49 of the Criminal Code clearly states that reasonable force must be used against an arrested person and that he or she must not be detained longer than is necessary to prevent flight. However, police often ignore and abuse these standards. Because there are people dying in prison and these deaths are hidden by the leaders because they are the investigators and have all the evidence.



5. The reason the death rate in nursing homes is increasing is because no strict measures were taken against them in the past and is unprecedented today. Now is the time to set a strong precedent to prevent police from abusing their power.

### **Custodial Torture**

Custodial abuse refers to abuse committed by law enforcement against convicted criminals while they are in prison. The Supreme Court decided to reject the idea of abusive care, calling it a blatant crime and an affront to human dignity. Abuse in custody is a criminal offense, but due to inequality in the system, perpetrators often go unpunished. It was reported that the doctor who performed the autopsy was injured by the police and could not perform his medical duties. Physical examination is an important part of the investigation process; Evidence may be obtained during the trial. Whereas the judicial system has been compromised and other evidence has been presented by police agencies investigating the death.

India has signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment since 1997, but has not ratified the convention. Although the legislature passed an anti-torture law in 2017, there is no anti-torture law in India. Some of the key reasons why torture and deaths in nursing homes are not decreasing are:

In 2018, the Legislative Council of India in a report recommended that India ratify the United Nations Convention against Torture and enact a law prohibiting government officials from coercing the public. The report stated that India faces difficulties extraditing criminals from other countries due to its reputation for torture in custody.

### **NHRC role**

The National Human Rights Commission's constitution is enshrined in the 1993 Human Rights Protection Act and addresses deaths in police custody and deaths in judicial custody. Take a test or make a suggestion. India's National Human Rights Commission reported that in the financial year 2021-22, as of February 28, 2022, 2,152 people died in judicial custody and 155 people died in police custody. According to a report released by the National Campaign against Torture (NCAT), 1,606 people and 125 police officers died in judicial custody in 2019. On July 26, 2022, Home Minister Nityanand Rai, while replying to a question in the Lok Sabha, announced that India had recorded the deaths of 4,484 security guards from the 2020-21 financial years to 2021-22.

Shortly after its establishment, the Commission realized that death care was an area of serious concern and therefore issued some guidelines to the authorities. In addition to deaths in medical facilities and in police custody, district administration and police inspectors must report deaths in custody to the Commission within 24 hours of death. In this case, the autopsy must be video-based. The commission played an important role in stopping some deaths in care. The Commission will take complaints from victims' families seriously and will not rely on information provided by the police. A report published by Transparency International in 2019 stated that the National Human Rights Commission recorded a total of 31,845 deaths in custody between 1993 and 2016. Although the National Human Rights Commission has served its purpose well, there is still much work to be done. The jury must comply with the law which will create fear among the authorities as they will be wary of the use of force.

### **Solution to control of custodial death of prisoners**

Firstly, D.K. Basu v. State of West Bengal 1996 should be done properly.

1. The person arrested and responsible for interrogating the defendant must carry an identification card stating the person's name and position.
2. The police must prepare a report when arresting the accused.
3. The news that the defendant has been caught must be reported to the defendant's relatives or friends as soon as possible
4. If the accused's relatives and friends live outside the county, they must notify the defendant of the arrest by telephone from the "law enforcement agency" at the county school and local police within 8-12 hours of the arrest
5. The arrested person must be informed that he has the right to inform others about his arrest.
6. Arrest records must be submitted.
7. Arrested persons should be questioned while being arrested.
8. The detained person must undergo a medical examination within 48 hours of being detained.
9. Copies of all documents and records will be sent to the Governorship of the relevant region.
10. Detainees have the right to meet with their lawyers during the investigation.
11. Instructions should be issued in police control rooms in all state and district headquarters and information regarding arrest should be sent to the police control room within 12 hours of arrest.

Because according to the information provided, most police officers are criminals. They are not afraid to use force against the accused because they will not be punished. This situation must change if we are to prevent deaths in healthcare settings as a result of preventive measures to prevent abuse by workers. It sets out the main provisions of the Constitution of India. There should be strict laws against those who abuse their power.

Second, defendants and defendants are often judged by the media. This situation causes the public to perceive the accused as guilty, so their mistreatment is often ignored. He also told police that he did things as expected..

Third, lower-level police officers are high-ranking police officers or government officials tasked with solving criminal cases or obtaining confessions. *Prakash Singh v. Union of India, 2006*; The Supreme Court has asked state and central governments not to rely more on the police.

Apart from the *D.K. Basu v. State of Bengal judgement* 7 directives laid down in the *Prakash Singh v. Union of India* needs to be implemented as well.

1. The court decided to establish a National Security Council to ensure that the state government does not use violence against the police. The court said the board should issue some guidelines to the police and review the performance of the police.
2. It should be ensured that the Chief of Police is appointed with a qualified qualification for a period of two years.
3. The third directive said that the tenure of SPs in the police force as city inspectors and police officers should be at least two years.
4. The fourth directive calls for the separation of investigation and police work.
5. A Police Commission will be constituted to evaluate the transfer, transfer, promotion and other services of police officers at the level of Deputy Commissioner and below. The committee will also recommend the transfer and induction of officers above the DSP rank.
6. Police Complaints Commission (PCA) should be established under the supervision of police officers of DSP rank or above to investigate public complaints regarding crimes related to crime, torture or



death in the state. PCAs should be set up at the district level to redress grievances of officers below the DSP level.

7. The final directive calls for the establishment of the National Security Council among the institutions with the authority to form a panel to select and install the heads of police departments for an average period of at least two years.

### Research Findings

The findings regarding deaths in care raise several important points. Research shows that deaths in care are often linked to entrenched patriarchy, violence and abuse.

During abuse, a conflict occurs between the abuser and the victim, causing hope and fear, and eventually leading to the elimination of the subsequent attack. Confession occurs during this stage and this cycle is aptly named "Destruction". Many people want to die and find a solution before they get to this point. Only a few were killed or deliberately thrown away. The benefits and effects of moving away from pain, both physical and emotional, are enormous; It all depends on the person and the strategies used. Depending on the method used, a thorough examination of internal injuries may not reveal signs of abuse. Some surgeries leave no visible scars but can damage the body and internal tissues. Psychologists note that psychological disorders include the main symptoms of numbness accompanied by the re-experiencing of trauma, memories, feelings of passion, violence and anxiety in relations with the outside world, negative thoughts and destructive behavior.

### Conclusion

Evidence from the NHRC and NCRB shows the dangers of caring for the dead. It needs to change. The protection the police receive from the state despite their abuse of authority is a serious problem. When there are deaths in custody, police misconduct must be investigated and police officers must be punished. Officers need to be set up in advance so they know they can't use force beyond their limits. Considering the current situation, it is difficult to say that dying in care would be better. Stronger laws are needed, especially to punish those who abuse their powers and commit crimes that cause loss of life. In order to reduce deaths in care, D.K. Basu v. State of Bengal and Prakash Singh v. The Union of India should be strictly implemented. The appalling cost of death care reflects the state of law and order in India. Since the police are responsible for all evidence and documents, no evidence is helpless against the police who caused death in custody because they cannot punish the person without evidence.

### Scope for Future Research

Despite repeated attempts to criminalize deaths in custody, the number of these cases remains high. To solve this problem, we must consider changing laws and government practices. Here are some tips:

1. Spreading awareness: What is important is that many women are still unaware of their rights and are subjected to police injustice. Plans should be made to educate prisoners about their rights and to explain that they need not suffer under any circumstances.
2. Stricter laws and speedy trials: Stricter laws and speedy trials for crimes are needed to ensure justice.
3. Law enforcement: The management of such cases should be strengthened and prosecution should be initiated in cases involving the death of prisoners.

**Limitations**

Many restrictions in India hinder the resolution of the custodial death. The weakness of law enforcement and the judicial system leads to delay and inadequacy in the delivery of justice. In some cases, evidence or lack of evidence can disrupt the trial and allow perpetrators to escape punishment. Lack of clear rules, social stigma and the complexity of the problem can cause this. Researchers need to solve these problems to gain a deeper understanding of this social problem.

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