

## **CUSTODIAL DEATHS IN INDIAN JAILS (PUBLISHED)**

Every society is controlled by laws and regulation to circulate the order and civilization among the society but what if the enforcers of law are themselves responsible for disrupting balance in the society. Our country India is a population of billions of people and it is hard to maintain the peace in the society and it is natural that something is bound to go off the track and we call that a human error but when that human error is responsible for taking someone life then there is a serious need to look where it all went wrong. Custodial violence is very common in India and is practiced in almost every state whether we should accept that or not. And the only reason it happens is because the police officer as their tendency to fast tract solving of case at earliest sometimes tends to go over the edge and with the power in their hand they forget that there is a human that is being tortured to an extend which is not humanly in nature.

In the recent times, custodial violence is emerging at a very rapid rate. It is now time to put an end to these practices because we have acts that describe the level of punishment that he/she deserved.

The question arises what actually is custodial violence and how does it impact the very basic fundamentals of our constitution.

Custodial violence is the illegal forced used by a police authority or a jail authority on the convict which is inhumane, brutal and degradation towards humanity, it is the ill treatment that is given to a convict which leads to an impact on their psychological and physiological health. The system in the custody is more harsh and inhuman than it seems to the rest of the world. There is no way to understand why this system of custodial violence still exists in our society. It is sad fact that even though we are moving towards modern times but our methods of treating convicts are still ancient.

### **How custodial violence does damages to the basic fundamental of our Constitution<sup>1</sup>?**

**Article 20<sup>2</sup>:** Protection in respect of conviction for offences:-

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<sup>1</sup> [https://www.india.gov.in/sites/upload\\_files/mpi/files/coi\\_part\\_full.pdf](https://www.india.gov.in/sites/upload_files/mpi/files/coi_part_full.pdf)

<sup>2</sup> <https://indiankanoon.org/doc/655638/>

1. No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence;
2. No person shall be prosecuted and punished for the same offence more than once;
3. No person accused of any offence shall be compelled to be a witness against himself.

This article is considered to be judicious, fair-minded and rational in the nature. This is also considered as no human being should be deprived of life and the private freedom except according to the rule and regulation of the law of the time being in force.

**Article 21<sup>3</sup>:** Protection of life & personal liberty No one shall be deprived of his life or personal liberty except according to method established by law.

**Article 32<sup>4</sup>:** This is also one of the important as well as the backbone of the Indian constitution, this article have made it rather possible for the victims to be head fast and less effective SC even consider a mere letter stating the facts of the offence and violation of the rights of the victims as the write petition this ways the pain and the longer paper work which is tiring and time consuming is reduced and the matter are given grave and more importance in cases where there is violation.

### **Christen community welfare council vs. state of Maharashtra (1994)<sup>5</sup>**

On 26 August, 1994 In this case the person was arrested and died in the police custody and the wife of the deceased was also locked down in the lock up room of the police station and was molested by the police officer and was informed about the death of her husband, after the above incident she was then represented by the christen community welfare council.

The judgment given by the Supreme Court was that all the ten police officer who were involved in the incident was liable for the punishment under IPC U/s. 302, 343, 354 and direct the state

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<sup>3</sup> <https://indiankanoon.org/doc/1199182/>

<sup>4</sup> <https://indiankanoon.org/doc/981147/>

<sup>5</sup> <https://indiankanoon.org/doc/432679/>

government to pay compensation to the wife of the diseased The state government after the above said case directed guidelines which had to be followed:

- It was instructed to the police officers after arresting and before detainee is taken to the magistrate he should be medically examined.
- Detailed of his /her medical information.
- Details of his / her medical report in station diary of police station and shall be given the same to the magistrate
- At the time of arrest the person should be medically examined should if he is carrying any major and minor injuries which should be recorder in the 'inspection memos'
- The female arrestee shall not be arrested after the sun rest and before the sun rise and if arrest is necessity, it should be done by the female constable.

#### **D.K Basu v. state of west Bengal (1997)<sup>6</sup>**

Under this case the chief justice of India had written letter informing about the lock up custodial death and Supreme Court consider the letter as the petition.

- The court observe despite the several rules and regulation and laws aimed at providing safeguard there have been several instances of torture still prevalent in society.
- The court cited the existence of custodial death and regarded it to be one of the worst crimes in civilized society governed by the rule of law.
- The police officer carrying out the arrest and handling the interrogation should make it clear and visible identification his name tags with the designations and the particulars as to who are handling the interrogation.

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<http://defensewiki.ibj.org/images/b/b6/Basu#:~:text=On%20December%2018%2C%201996%20in,The%20requirements%20read%20as%20follows.>

- The police officer who is carrying the arrest should prepare a memo and which shall be attested by witness of the family or any member of the locality.
- The place of arrest, time and station where arrestee is must be notified to the family, relative.
- The persons arrested must be given the information about his arrest.
- There must have made an entry in the case diary at the police station regarding the name of the person who has been informed about the arrest.
- The arrestee should be examined while making arrest medically his body parts for any minor or major injury.
- Copies of all the above said and other should be attached and send to the magistrate for his record.
- The arrestee may be permitted to meet his lawyer during the interrogation or throughout the interrogation.

### **A Hypocritic Silence**

On 26.06.2020, a video narrating the event of custodial death of father and his son by the Sattankluam police went viral in India across all social platforms. Ironically that very same day the world celebrated the United Nations International day in support of Victims of torture. The incident that took place did not only reflect the horrors of custodial deaths but also the transition of a educated man to a person not fit to be around general public. This incident serves and example how the protector of law and order abuse the legal setup intended to protect the individual. Recently the whole world witness the US police brutality which led to a mass campaign of “Black Lives Matter” and now India itself witness the mayhem of the legal as human rights at the hand of our police authorities. P Jeyraj and his son, Fennix, aged 62 and 32 respectively were detained by the police for opening their shop beyond the authorized time during the lockdown. It amounts to a violation of lockdown guidelines along with other minor offenses punishable under Sec.188<sup>7</sup>, 269<sup>8</sup>, 294(B)<sup>9</sup>, 353<sup>10</sup>, and 506(3)<sup>11</sup> of the IPC. As per Sec.41

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<sup>7</sup> <https://indiankanoon.org/doc/1569253/>

of Cr.P.C<sup>12</sup>, police arrested them without a warrant only in exceptional circumstances and opening shops beyond official time stands in disagreement with section 188 of the IPC. The magistrate approved police custody of the duo without their physical examination as that customary has been eased in wake of COVID-19 protective measure. Before being shifted to Central Jail, the two were shifted to a sub police station where, according to various reports and speculation on the social media platforms, the Sattankluam police personnel had beaten P Jeyraj, who is in his 60s; to which, his son, protested this led to an altercation between Fenix and police. Police personnel had then beaten both father and son at Kovilpatti mercilessly without any fear of the outcomes of their actions. Police authority is responsible for maintaining peace and to control crimes in the society but no one has given them the right to beat any individual certainly not to the extent of killing that person. If a general person lays a hand on police authority he is been booked under various sections of laws but if a police officer does the same abuse of power serves the justice by taking it away from the individual affected. A son trying to protect his father who is in his sixties somehow manages to infuriate the police authority to such an extent that they have to pay the price by their own lives.

Fenix was brought to Kovilpatti Governmental Hospital owing to his excessive bleeding where he was confirmed dead on the evening of 22.06.2020. His father, admitted due to respiratory troubles, was confirmed dead too when brought to the hospital the very next day. The autopsy report serves as a testimony of police brutality as it confirms critical injuries to the deceased. The death of the duo, as a result of police brutality, has surged people in rage causing the region to witness mass protests against the police workforce. Currently, the involved police personnel's stand suspended but the family of the deceased are demanding a murder inquiry against the involved police officials. The main questions that should be asked to the police authority is that the involved police officers in the incident were enjoying the devastation of not one but two human lives by their own hands because they certainly didn't care that whosoever they were inflicting the hell upon were human beings who can feel. It is a very sad thought that what was done to a father and son was not only inhuman in nature but no one in their sensible mind would

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<sup>8</sup> <https://indiankanoon.org/doc/1569253/>

<sup>9</sup> <https://indiankanoon.org/doc/1569253/>

<sup>10</sup> <https://indiankanoon.org/doc/1569253/>

<sup>11</sup> <https://indiankanoon.org/doc/1569253/>

<sup>12</sup> <https://indiankanoon.org/doc/445276/>

commit such horrors. They did make a mistake but nowhere in the constitution was given that the punishment would be given by taking their lives.

Abuse of power has costed our country a lot previously, it was monetary but now it has started taking lives. The more disturbing fact is that because it was done by a branch of governmental authority many of the citizens were not unaware of the incident nor did the Indian media consider it worth the TRP to be running on their tonight specials

Everything above said indicates that the society is not moving on a healthier growth, a person in prison has his/her fundamental rights which no police or jail authority can take it away. Jail is a place where a person is sent to understand what he did was wrong not only against a person but also against the society. If such treatments continue in the near future then there is no stopping of crime and rather controlling the crime we would be encouraging our youth to be exposed to police brutality which itself is a whole different subject. Describing punishments was exactly aimed to avoid these circumstances. If these custodial deaths still continue in the near future then the very basics of our fundamental rights will be violated on daily bases. All lives matter and are respectful, it is because of the people the society exists but incidents like these will have an adverse impact on the society and the impact of this adverseness will welcome an era of crimes as people will soon realize that if the governmental authorities protected by the law which is originally made for the protection of the people soon the society will be derailed from its path of development or upliftment and in no time, we all will be in dark times. Police brutality is nothing but criminal behind uniforms abuse the power under the name of protection of people by claiming their lives in order to make them an example out of them in the society to create a sense of fear among people. Before ending the article, I just want to know what is the actual role of a police officer? Is it to make us feel with their presence or scared to death when they are around. The concept of violation of fundamental rights is a grave problem as it ensures right to life but when this right is taken away from a person he/she is prone to horrors unimaginable to human minds with taking of right to life every single rights goes out especially right to life with dignity, the main reason of the narration of above incidences where to stress on the fact that a person in custody does not have any rights to protect himself nor his/her dignity and is at complete mercy of the police authority and could only hope to be treated as humanly as possible. This unpleasant incident of police cruelty in the name of protecting law and order has shocked the beliefs of the

people. The specific process and provisions were bypassed by the police officials to bring the fury of heartless savagery on the accused. This incident has also violated the code of conduct of law enforcement, international covenant on civil and political rights, UN convention against cruelty, inhuman or degrading treatment punishment and the universal declaration of human rights. It's an important juncture where authorities and judiciary shall step up to stop human rights violations and set examples to respect the fundamental rights fixed in Article 21 of the Indian Constitution. Police official being convicted for custodial deaths are a very rare headline. The escalating number of custodial deaths but zero convictions presents an imperative narrative demanding thorough assessment of systemic flaws embedded in a culture of impunity, corruption, discrimination, eroding justice system and power play compounding to violation of human rights. If this is how it is, we need to question the very fundamental values of our system that endanger the lives of the most vulnerable – Muslims, Dalits, tribals and women. We need some dire measures to be implemented. The people will soon stop having faith in the entire constitution resulting in a chaotic society beyond our imagination. No society is perfect but strict steps can at least be taken to ensure the continuation of existence of that very society in context.

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