

**The alarming trend of Custodial violence and Police brutality: An overview  
of Indian Legal scenario**

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**Introduction:**

Custodial violence and police excesses are not an alien concept; these have been in existence since the colonial era, right from the Mathura case to Delhi police violence on Jamia Milia Islamia students.<sup>1</sup> And more recently, was the global outcry on the “Black Lives Matter Movement”,<sup>2</sup> owing to the death of George Floyd, in the United States against police brutality and racism, which gained global attention and became a widely debated topic even in India.

But it is saddening to note in one the largest democracies in the world, like India, often the instances of police bias, custodial crimes, and use of ruthless third-degree torture methods are not brought into attention or remain unaccounted for. And sometimes, it is viewed as a routine law-enforcement strategy terming it as a method of “quick justices” to extract a confession, discriminate and punish the accused. However, it is significant to note that under Section 25 of the Indian Evidence Act, 1872 the confession made to police cannot be accounted as evidence against the accused. The National Human Rights Commission (NHRC) of India recorded a total of 1,723 cases of death of persons in judicial custody and police custody across the country from January to December 2019, which amounts to an average of five deaths per day.

In addition to adding fuel to the fire, the imposition of stringent lockdown rules during the COVID 19 pandemic as an emergency measure, vested a considerable amount of power in the hands of the police, which made the police excesses even more pervasive and dreadful. The most catastrophic scenario was the custodial death of Jeyaraj and Bennix at Sathankulam town in Thoothukudi district, Tamil Nadu, who were arrested on the charges of violation of COVID

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<sup>1</sup> Tanushree Pandey, *Jamia violence : New CCTV footage Shows Delhi Police beating up students in library CCTV footage shows*, INDIA TODAY (February 16, 2020), <https://www.indiatoday.in/india/story/jamia-violence-new-cctv-footage-shows-delhi-police-s-brutal-crackdown-on-students-1646935-2020-02-16>.

<sup>2</sup> Jen Kirby, “*Black Lives Matter*” has become a global rallying cry against racism and police brutality, VOX (Jun 12, 2020) <https://www.vox.com/2020/6/12/21285244/black-lives-matter-global-protests-george-floyd-uk-belgium>

19 curfew rules, and died of bodily injuries and excessive bleeding inflicted by police in custody. This incident provoked a huge rage in India against police brutality, thus, exposing the seriousness of police excesses in India.<sup>3</sup>

Thus, these low conviction rates and unaccountability of police excesses expose the shadows of the powerplay, corruption, political nexus, and the culture of impunity. Hence, this article examines the legal safeguards pertaining to the menace of custodial violence and police brutality and throws light on landmark judgments and recent developments in the criminal administration system.

### **Legal safeguards pertaining to the menace of custodial violence and police brutality:**

Though there is no specific legislation or definition under the Indian legal system, which specifically states about custodial violence and torture, the right to protection against torture and inhumane treatment is a fundamental right implicitly enshrined under Article 21 of the Indian Constitution and in furtherance, Article 21 read with Articles 14, and 19 of the Indian Constitution, acts as a barrier against the arbitrary exercise of sovereign power. Thus, making the state obligatory not to incarcerate except under law which is fair, just, and reasonable in its procedural essence.<sup>4</sup> And various penal provisions such as Sections 330, 331, 376(2), 348 of Indian Penal Code, 1860 and special provisions such as Section 29 of Indian Police Act, 1861 imposes charges against custodial crimes caused by police. And various international treaties and conventions such as The International Convention on Civil and Political Rights (ICCPR), United Nations Convention against torture and other cruel forbid unjust and inhumane treatment, in furtherance directs the state to ensure accessibility their right entrusted under the treaty.

### **The existence of the culture of impunity in India:**

Despite the existence of various penal and constitutional provisions prohibiting custodial crimes and police excesses, the National Crime Records Bureau (NCRB) report from 2005 to 2018, revealed that concerning the death of 500 “persons remanded to police custody by the

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<sup>3</sup> Arun Janardhanan, *Explained: How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son*, INDIAN EXPRESS (July 4, 2020), <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/>.

<sup>4</sup> Jolly George Varghese v Bank of Cochin, 1980 AIR 470.

court,” not a single policeman was convicted as on date.<sup>5</sup> These staggering figures of low conviction rate expose the shadows of the powerplay, corruption, political nexus, and the culture of impunity in India.

Firstly the reason behind the burgeoning cases of police excess and callous nature of law enforcement agency is that in most cases, the victims of police abuse, don't voice out the crime in fear of retaliation and criminal prosecution enforced under the Sections 197 and 132 of the Code of Criminal Procedure, 1973, which states the requirement of government sanction for implementing prosecution against offense done by the police officer during the course of his duty, thus providing de facto immunity to the police, vested under the shield of uniform.

Secondly, to establish criminal liability against the police in the cases of custodial crime, the burden of establishing liability beyond reasonable doubt vests on the victim or the kith or kin of the victim who is often deprived of proper material evidence such as accurate post-mortem report or registry of arrest and detention and on the top of it, the brotherhood among the police often silences the truth.

In furtherance, in most cases, the investigation regarding custodial crimes is conducted by either another division of police or Central Bureau of Investigation, which makes us question the impartiality in its dealing. And the punishment in many cases is either suspension or temporary transfer to another delinquent police personal.

These kinds of insensitive approaches decay the equal accessibility of effective remedy under law. And furtherance consequently results in promoting anarchy and authoritarianism. Thus, providing a ground for the exploitation of basic human rights.

### **Landmark Judgements and Subsequent developments administration of criminal Justice System:**

#### **1. *Joginder Kumar vs. State of UP*<sup>6</sup> :**

In this landmark judgment, the Supreme Court of India took serious note of the incalculable harm caused to the reputation of a person due to the arrest and thus, directed that no arrest or detention shall be made arbitrarily; it must be just and reasonable. And further recognizing the rights inherent in the Articles 21 and 22(1) of the Indian Constitution, it laid down that the arrestees have the right to have someone

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<sup>5</sup> Pavithra, *Data: Between 2014&2018, No Police Personal were convicted for custodial deaths*, FACTLY (July 2, 2020), <https://factly.in/data-between-2014-2018-no-police-personnel-were-convicted-for-custodial-deaths/>.

<sup>6</sup> *Joginder Kumar v. State Of U.P.*, 1994 AIR 1349.

informed about their arrest, and similarly, an entry must be made in the diary as who was informed about the arrest. It is the duty of the magistrate to ensure that these requirements have been fulfilled.

2. ***Nilabati Behera v. the State of Orissa***<sup>7</sup>: The Apex Court underlined the vicarious liability of state in the case of the wrongdoing of public servants in exercise of duty and further differentiated the remedy in public law and private law and stated that the defence of sovereign immunity didn't apply to the compensation resulting under Articles 32 and 226 of the Indian Constitution and held that victim compensation could be claimed against the state in case of human rights violation.
  
3. ***D.K. Basu v. State of West Bengal***: finds its important place among other landmark judgments and laid down 11 guidelines that need to be followed by every police officer while making an arrest or detention.
  - All police officers, while carrying out an arrest or interrogation, must wear a clear name tag, and complete details of police officials handing the interrogation must be recorded.
  - The police officer making an arrest must prepare an arrest memo with details of the time date of seizure that is attested by at least one witness and countersigned by the arrestee.
  - The details of the time and place of detention of the arrestee must be informed to a next friend or relatives as soon as possible within 8-12 hours of arrest by the police station.
  - An entry must be made in the daily diary regarding the details of the arrest and next friend of the arrestee and police officials who hold custody.
  - A medical examination of the arrestee must be conducted every 48 hours.
  - The inspection memo must be signed by the arrestee and countersigned by the police officer, and a copy must be given to the arrestee.
  - All documents, including records including arrest memo and inspection memo, must be sent to the magistrate for registration.
  - A Police Control Room (PCR) must be set up in all district and state headquarters, and details of arrest must be communicated to PCR within 12 hours of arrest.
  - An arrestee must be informed of his right to consult the lawyer.<sup>8</sup>

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<sup>7</sup> Nilabati Behera v. State of Orissa, 1993 AIR 1960.

<sup>8</sup> D.K. Basu v. State of West Bengal, 1997 (1) SCC 416.

## **Conclusion**

At this juncture, burgeoning cases of police excesses in one hand and low conviction rate of delinquents of custodial crimes on the other, reflects the failure of democracy and the blatant disregard of the basic human rights, which reminds us of one fundamental question raised by Justice V R Krishna Iyer in the year 1980 'Who will police the police?', which still remains unanswered. Thus, there is a need for radical police reforms, and specific legislation must be enacted to check the unlimited powers of police officials. Thus, the state, besides awarding compensation for the victim, must ensure an environment free from human rights violations.