

Black Lives Matter — An Insight Into Lack Of Political Or Legal Repercussions For Death In Custody

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Introduction

Prejudice and bias are inherent in every society. The quest to prove one's supposed and alleged superiority whether in terms of gender, race, age, class, etc., and to put a penumbra on his/her personal weaknesses, a person becomes a chauvinist supporter of his/her 'superior' group. It should be kept in mind that not all persons come within this yardstick and fortunately we are blessed with people who contest and reject these biases.

Historically, a large part of our world had been an object of conquer and dominance by white colonialists who showcased their formidability and cultural and racial superiority by wars, conquests, pillage, etc. Although temporarily democracy, freedom and liberty have officially replaced white chauvinist colonialism, yet we are under the tight clutches of white supremacy and racial prejudice. There are innumerable horrific and condemnable instances showcasing this narrow mindset. For instance, after Trump's election win in 2016, a woman recalled a racist experience in which she was ridiculed for wearing a hijab and was told to hang herself with it. Another incident depicting this sick mentality was the killing of a non-white individual called Arbery by two white-supremacists who shot him three times in cold-blood. Unfortunately, the carriers of this dogmatic mindset are not only ordinary people but also include those persons who are obliged to protect and serve the citizens without any prejudice.

Custodial Death of George Floyd

The extra-judicial custodial deaths of people of racial minority groups exhibits these racist tendencies in law-enforcement officers. Torture or violence in custody is considered to be one of the most truculent acts.¹ In custodial deaths, the people who are under custody of police may die because of any reason.² The incessant torture and violence on people in custody to find truth showcases the incapability and problematic approach of investigation which aims at undue force and coercion rather than doing actual investigation. The issue of custodial deaths

¹ Rukmani Seth, *Custodial Torture*, Legal Service India [Online] Available from: <http://www.legalservicesindia.com/article/297/Custodial-Torture.html> [Accessed October 15, 2021].

² Ayush Verma, *Custodial Death and Anti-torture Law*, Ipleaders, January 3, 2021 [Online] Available from: <https://blog.ipleaders.in/custodial-death-anti-torture-law/> [Accessed October 14, 2021].

is very complex and controversial all around the world and because of its unprecedented amplification and frequency, the issue has become even more grave and requires absolute attention.

The unfortunate and ruthless murder of George Floyd in police custody has revitalised the issue of extra-judicial killings and custodial deaths. George Floyd, a 46-year-old person was arrested on 25th May, 2020 in Minneapolis on the charge of using a counterfeit bill. While arresting Floyd, one of the officers without any valid reason drew his gun and directed Floyd to show his hands. While putting him in their squad car, Floyd resisted, fell to the ground and told the officers that he had claustrophobia (fear of closed spaces). Paying no heed to his distress, one of the officers Chauvin put his left knee between his head and neck for more than 9 minutes which eventually suffocated him to death. During these 9 minutes, Floyd begged for his life and many times stated that he is unable to breath.³ The whole incident was caught on tape and was widely circulated on the internet which re-ignited the Black Lives Matter (BLM) movement leading to worldwide protests against police- brutality, police racism, and lack of police accountability.⁴

Black Lives Matter

The inception of the landmark movement called Black Lives Matter can be traced to the 2013 incident of the acquittal of George Zimmerman in the murder of Trayvon Martin, an African-American High School student. This movement further got momentum after a Missouri police officer fatally shot Michael Brown, an unarmed Black teenager and the resulting acquittal further ignited the movement. The primary objective of Black Lives Matter is the "extrajudicial killings of Black people by police and vigilantes." Its core objective is to intertwine and collaborate the motive to provide justice for police torture victims with more radical and sophisticated objectives.⁵

Statistics regarding unlawful custodial deaths around the world

³ Evan Hill, Drew Jordan, et al., *How George Floyd was killed in Police Custody*, New York Times, May 31, 2020 [Online] Available from: <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [Accessed October 15, 2021].

⁴ *Extrajudicial Killing of Black Americans*, The Centre for Justice and Accountability [Online] Available from: <https://cja.org/what-we-do/litigation/extrajudicial-killing-of-black-americans/> [Accessed October 15, 2021].

⁵ Peter C Meyers, *The Mind of Black Lives Matter*, National Affairs [Online] Available from: <https://www.nationalaffairs.com/publications/detail/the-mind-of-black-lives-matter> [Accessed October 15, 2021].

Despite the impetus ignited by the BLM movement all over the world, extrajudicial homicide of Black people by law enforcement officials persists with horrendous frequency and with a persistent lack of accountability. In the first eight months of 2020, police in the U.S. killed 164 Black people.⁶ The Washington Post in 2015 initiated the recording of fatal shooting of police officers in US. According to its database, with population of less than 14%, the percentage of African-Americans is about 24% of over 6,000 deathly shootings by the police since 2015.⁷ Online research published in the Journal of Epidemiology & Community Health stated that the proportion of lethal police encounters of unarmed Black people in the US is more than 3 times as high as it is among White people.⁸ The reason for this unending and rising frequency of extra-judicial killings is the deficiency in holding accountability of the perpetrators responsible for unjustifiable use of force or violence. Around 98.3% of deaths caused by police from 2013 to 2020 have led to zero accountability.

Over the past two decades, Jamaican authorities have been responsible for more than 3,000 killings by the police since 2000. In 2015, 8% of all murders committed across Jamaica were at the hands of law enforcement officials.⁹ In England, the Ministry of Justice in a report recorded the highest number of deaths in prison up to March 2017. According to 2011 census in England and Wales, it was determined that black people are more than twice as likely to die in police custody.

Despite the international treaties and conventions like the 1987 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), Commonwealth Human Rights Initiative, etc., no significant improvement in curbing the extra-judicial custodial deaths can be realised highlighting the sine qua non measures that need to be found.

Problem of Custodial Death in India

⁶ *Supra* note 3.

⁷ Reality Check Team, *George Floyd: How are African-Americans treated under the law?*, BBC News, April 21, 2021 [Online] Available from: <https://www.bbc.com/news/world-us-canada-52877678> [Accessed October 13, 2021].

⁸ Newsroom, *Fatal police shootings of unarmed Black people in US more than 3 times as high as in Whites*, BMJ [Online] Available from: <https://www.bmj.com/company/newsroom/fatal-police-shootings-of-unarmed-black-people-in-us-more-than-3-times-as-high-as-in-whites/> [Accessed October 13, 2021].

⁹ Press Release, Jamaica's Deadly Police: 'We live in constant fear', Amnesty International, January 19, 2017, [Online] Available from: <https://www.amnesty.org/en/latest/press-release/2017/01/jamaica-s-deadly-police-we-live-in-constant-fear/> [Accessed November 17, 2021].

The state of affairs regarding custodial deaths in India is extremely deplorable and worrisome. A report named 'India: Annual Report on Torture 2019'¹⁰ which came during the observance of International Day in Support of Victims of Torture stated that around 1,606 people died in judicial custody and 125 in police custody with Uttar Pradesh at the apex rank. Of the 125 cases in police custody, 93 persons (74.4%) died due to alleged torture or foul play, while 24 (19.2%) died under dubious circumstances in which the police cited suicide (16), illness (seven) and injuries (one).¹¹ The reasons for the custodial death of five others (4%) were unknown, the report said. This is accompanied with no culpability and accountability of the police officials despite internal department investigations. According to Human Rights Commission of Pakistan (HRCP), approximately 34 people died in police custody and 27 in police encounters in the time period of January 1, 2018, to September 18, 2019.¹² The HRCP had released a report called 'Police Torture in Faisalabad' in 2019 which addressed an ineffective state response and weak accountability and redress mechanisms in custodial deaths.

Conclusion

The extra-judicial killing and unlawful custodial deaths are a menace to our society and a gross violation of rule of law and principles of justice. It becomes even more problematic when these fatalities occur due to personal prejudices or intolerance towards some sections of society. The law-enforcement officials have a duty to protect and serve the citizens from danger and anti-social elements. In order to live freely and fearlessly, appropriate measures are a necessity to avoid the transformation of protectors into perpetrators of society.

True dedication in obedience of international treaties and conventions like 'UN convention against torture' aimed at preventing torture and violence against people in custody. Around 171 nations have ratified this convention and accordingly enacted Anti-torture Laws except five countries including India. The general indifference towards increasing frequency of custodial deaths and extra-judicial killings need to be addressed and reformed. The Supreme

¹⁰ 'India: Annual Report on Torture 2019' released by the National Campaign Against Torture (NCAT) on the occasion of the International Day in Support of Victims of Torture.

¹¹ The Wire Staff, *Custodial Torture Continues Unabated in India Amidst Culture of Impunity: Report*, The Wire, July 8, 2020 [Online] Available from: <https://thewire.in/rights/custodial-torture-continues-unabated-in-india-amidst-culture-of-impunity-report> [Accessed October 13, 2021] and The Hindu, *Five Custodial Deaths in India Daily, Says Report*, The Hindu, The Hindu, June 7, 2020 [Online] Available from: <http://www.uncat.org/in-media/five-custodial-deaths-in-india-daily-says-report-the-hindu/> [Accessed October 13, 2021].

¹² Imran Gabol, *With recent custodial deaths in Punjab, what is being done to counter police brutality*, Dawn, October 11, 2019, [Online] Available from: <https://www.dawn.com/news/1509712> [Accessed October 13, 2021].

Court in *DK Basu v. State of Bengal* issued certain guidelines to prevent violence in police custody which include that the detained person has the right that his/her relative/friend is apprised about the arrest and all details regarding the same.¹³ Appropriate laws making the police officers criminally accountable for the acts of unauthorised and inhumane violence in case of any death or torture in their custody are a necessity. As per Article 20(3) of Indian Constitution, extraction of confessions through torture goes against the principle of right against self-incrimination which is a fundamental canon of criminal law jurisprudence.¹⁴ Similar laws can be traced in other countries also but its dedicated implementation goes way beyond the written law. A vigilant citizenry cognizant of their rights and the havoc of police brutality and extra-judicial killings goes a long way in eradicating the unjustified violence and killings. There should be a complete abrogation of archaic and inhumane laws enacted during the colonial times like “Police act of 1861” encompassing provisions authorising the infringement of human rights by police officers along with numerous loopholes by which it becomes effortless for the police to evade any serious culpability for the crimes they have committed. Sensitization of media in reporting the custodial deaths irrespective of the alleged crimes of the dead or tortured accused, making it perfectly clear that vigilante or unauthorised or unlawful custodial deaths is morally and legally wrong. Dedicated effort towards proper training with respect to acknowledging human rights of the prisoners or persons in custody along with appropriate working conditions will aid in preventing sudden outbursts leading to torture and custodial deaths.

It is imperative that police acknowledge their impact on society and the indispensable nature of their work. The position they hold carries a huge degree of responsibility and respect which is quintessential to be maintained. Hence, to encourage the civilians to uphold the law, these law officers need to first respect the law themselves and avoid arbitrariness. Hence, it is imperative for the police department to understand their role and responsibility in maintaining law and order.¹⁵

¹³ Vipul Pathak & Khushbu Sangwan, *Custodial Death in India- When our Saviour becomes a Slayer*, Lex Forti, July 22, 2020 [Online] Available from: https://lexforti.com/legal-news/custodial-death-in-india/#_ftn5 [Accessed October 15, 2021].

¹⁴ Vidisha Singh, *Custodial Death & Torture a Human Rights abuse: Indian and International perspective*, Latest Laws, July 24, 2020, [Online] Available from: https://www.latestlaws.com/human-rights-news/custodial-death-torture-a-human-rights-abuse-indian-and-international-perspective/#_ftn15 [Accessed October 15, 2021].

¹⁵ *Supra* note 11.