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## Custodial Deaths in India

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*Custodial death in India has been a volatile issue to administer amidst the negative outlook of the public towards prisoners and the laws protecting them on humanitarian grounds. It is a harsh reality in existence since the concept of punishment evolved in the human race. The causes of death range from diseases fight among prisoners and suicide to the torture inflicted by persons in authority. While Indian law protects prisoners from most of these reasons, their implementation is more effective when they align with International laws like the Standard Minimum Rules for the Treatment of Prisoners. This paper focuses on the definition of prisoners, their rights in India, and the rights governing them while in custody concerning their protection and mental and physical health. Special provisions have been made to protect female prisoners from any form of sexual assault. The bigger question lies in what and how can the public contribute as a third party towards the eradication of this social evil.*

**Keywords:** *custodial death, Indian law, prisoner rights, custodial rape.*

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### INTRODUCTION

Custody, in general terms, means protection. Custody is often referred to as imprisonment as well. It may be inferred that even during imprisonment, the purpose of confining one's liberty is to protect the individual from doing further wrongs. In Indian Law, there is no specific definition of custody. When a person is under police surveillance and cannot move from the

vicinity, it is considered custody<sup>1</sup>. When a person surrenders by proving evidence against him to a police officer, it is considered that a person is in custody.<sup>2</sup>

The terms arrest, detention, and custody are often used synonymously but they hold different meanings in the legal world. Detention is the act of holding someone under suspicion of any illegal activity by the police or any authority. The arrest is the act of seizing or forcibly restraining an individual of his or her liberty as a reaction to a criminal charge. An arrest can be made by a police officer, Magistrate, or even a private person when done by the provisions in the Criminal Procedure Code, 1973.

Custody is the act of surveillance for restricting the movement of an individual. It is often done for the protection of the individual from the public and to prevent any way of him evading the law so that a proper investigation of a case can be carried out. There are two types of custody – police custody and judicial custody. On receiving a complaint, a police officer can arrest the suspected individual in the matter for avoiding any further crime. This is called police custody and the arrested person has to appear before a magistrate within 24 hours<sup>3</sup> and the maximum duration for it is 15 days. On the other hand, the accused is locked in jail under the custody of a Magistrate in judicial custody.<sup>4</sup> The accused may be kept in jail until there is an order of bail from the court and it may be extended to 90 days. The laws governing custody are different in every country but the principle behind it has been the same to treat prisoners like any other human and provide all the necessities for dignified survival.

## WHO IS A PRISONER?

A prisoner is an individual who is confined in a detaining institution without his consent. The detaining institution may be one of a penal or correctional nature and even a psychiatric one at times. In layman's language, a prisoner is "a person deprived of liberty and kept under involuntary restraint, confinement or custody". A prisoner is a lawful prisoner if he's charged

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<sup>1</sup> *Chhotey Lal v State of Uttar Pradesh* (1953) CriLJ 1445

<sup>2</sup> *State of Uttar Pradesh v Denman Upadhyaya* (1960) AIR 1125

<sup>3</sup> Criminal Procedure Code 1973, s 57

<sup>4</sup> *Ibid*

with a crime or for liability of civil nature. Any other form of the prisoner is considered an unlawfully confined prisoner. The Prisons Act of 1894 categorizes prisoners into a criminal and civil one. A criminal prisoner is “a prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of Court Martial”<sup>5</sup>. Any other kind of prisoner who is not a criminal prisoner is a civil prisoner.

Often, there may arise a general confusion between the terms -- prisoner and prisoner of war. A prisoner of war is generally a person who is a member of the armed forces of a party to the conflict and has fallen into the power of the enemy.<sup>6</sup> A prisoner of war is also held captive like any other prisoner but the detaining authority here is a belligerent power or party with whom the concerned party was in conflict. While a prisoner of war is held captive after combat or surrender, a prisoner is held captive after being caught by the concerned authority in the state or surrendered. While prisoners of war come within the ambit of international law, prisoners of any state are governed by the statutes of their respective states.

In India, while war & peace come under the Union List, the subjects of police and prison fall under the State List. Therefore, while prisoners of war would be dealt with by the Centre, the States have the freedom to formulate their respective guidelines to run their prisons, reformatories, and other borstal institutions. These regulations are generally governed by the Prisons Act of, 1894 which looks after the administration of prisons, and the Prisoners Act of 1990 which caters to the need for prison reforms and prison justice. A prison means any jail or place used temporarily or permanently under the State Government’s orders for the detention of prisoners and includes all land and buildings associated with it.<sup>7</sup> The Transfer of Prisoners Act of 1950 aimed at transferring prisoners from one state to another to avoid overcrowding and maintain humane standards of living in prisons while providing them with vocational training for their sustenance.

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<sup>5</sup> Prisons Act 1894, s 3(2)

<sup>6</sup> Geneva Convention relative to the Treatment of Prisoners of War, art 4

<sup>7</sup> Prisons Act 1894, s 3(1)

## RIGHTS OF PRISONERS

A prisoner in any state is still an individual and a citizen. He has rights similar to any other individual or citizen in the state. In India, the basic Fundamental Rights are available to any prisoner except reasonable restrictions on freedom of movement and freedom of residence and settlement as provided in Article 19 (5) of the Indian Constitution which forms the crux of the prison system. Just like any other individual in India, the golden triangle of Fundamental Rights, i.e., Articles 14, 19, and 21 are available to the prisoners with the above-mentioned exceptions. The principle of equality in Article 14<sup>8</sup> protects the prisoners from undue discrimination by prison authorities and provides guidelines as to how prisoners should be categorized with the objective of reformation.

Article 19 guarantees six freedoms for all Indian citizens except freedom of movement and freedom of residence. Freedom to the profession or to be trained in any trade or business has been a matter of debate which requires monitoring of every case. Since the main objective of prison is reform and rehabilitation, the best way for its action is to train and employ them. In the colonial Indian Penal Code, section 53 allowed 'hard labour' as a form of punishment but after forced labour was considered unconstitutional under Article 23, there was a rise in the awareness of the rights of prisoners towards equitable wages. It was laid down that the wage rate provided to a prisoner for his work should not be a trivial one compared to the reasonable rate of wages.<sup>9</sup>

Under the broad ambit of Article 21,<sup>10</sup> every prisoner has a right to a dignified life and personal liberty. Life cannot mean living like an animal but extends to the dignity of human life. A dignified life includes the right to a speedy and fair trial<sup>11</sup>. With the mixture of Article 21 and 39A, a prisoner is provided with the right to Legal Aid. The right to life also includes the right to medical treatment and good health in both the physical and mental aspects. It is mandatory to appoint a medical officer in every prison who shall monitor the sanitary administration of the

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<sup>8</sup> Constitution of India 1950, art 14

<sup>9</sup> *Mohammad Giasuddin v State of AP* (1977) AIR 1926

<sup>10</sup> Constitution of India 1950, art 21

<sup>11</sup> *Hussainara Katoon v Home Secretary, State of Bihar* AIR (1979) SC 1360

prison and if he has reason to believe that any treatment or discipline may be detrimental to the health of an inmate, he is obligated to report it to the superintendent of the prison.<sup>12</sup>

In the international realm, the Universal Declaration of Human Rights 1948<sup>13</sup> and the International Covenant on Civil and Political Rights 1966<sup>14</sup> recognize the basic right of an individual to be not subjected to any form of cruel treatment or punishment. It respects the right to dignified life and liberty of an individual without the fear of arrest or detention. In 1975, the UN General assembly laid down that torture or cruelty in the form of degrading human dignity or punishment cannot be justified by invoking a state of war or internal political instability, or public emergency.<sup>15</sup> The right to compensation in case of wrongful detention and speedy trial was recognized in 1953.<sup>16</sup>

In 1955, the ‘Standard Minimum Rules for the Treatment of Prisoners were adopted in Geneva. It emphasized the protection of prisoners from one another by categorizing them into different groups like men and women or untried prisoners and convicted prisoners or civil prisoners and prisoners imprisoned for a criminal offence or young and adult. It stressed the presence of a medical officer with some expertise in psychiatry. Women prisoners were entitled to pre-natal and post-natal care and were allowed to nurse their infants in the institution. All inmates were provided with the right to practice their religion and to have access to books for recreational purposes.

Amnesty International activists have always considered the imminent danger faced by the individuals in detention. It condemns secret detentions, ill-treatment or torture, and prolonged solitary confinement. It seeks fair trial, regular access to lawyers, and adequate detention conditions for prisoners. Since 1961, Amnesty has been focusing on the immediate release of ‘prisoners of conscience’ who are people who have been imprisoned solely because of their individuality (sex, ethnicity, nationality, colour, etc.) or their beliefs (religious, political, etc.).

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<sup>12</sup> Prisons Acts 1894, s 13

<sup>13</sup> Universal Declaration of Human Rights 1948

<sup>14</sup> International Covenant on Civil and Political Rights 1966

<sup>15</sup> Declaration on Protection from Torture 1975

<sup>16</sup> European Convention on Human Rights 1953-69

## CUSTODIAL DEATH

Even with these protective measures available for prisoners, they are still under threat of being tortured to death by the people in authority. Not only is it a violation of basic human rights but it also is an illegal act where an individual loses his life while under the custody of the police. The exact definition of custodial death has not been provided explicitly but custodial torture has been defined as 'torture being done on a human being by another human being where to impose his will, it is done by "strong" over "poor"'. Custodial violence has always been prevalent in India starting from the Mughal period or Gupta period or even during the colonial British era. Custodial violence often takes the form of rape, third-degree treatment, and death. Torture, too, has been given a wider ambit by including physical and mental torture.

Along with the Constitutional provisions in India, few specific statutory provisions have been tailor-made regarding custodial deaths. Sections 302, 304, and 306 of the Indian Penal Code hold the police officer charged with murder if he is liable for the death of a suspect. Wrongful imprisonment for obtaining confessions by the police has been considered a punishable offence<sup>17</sup>. Use of any form of threat or inducement for obtaining a confession is strictly prohibited<sup>18</sup>. In the Criminal Procedure Code, Sections 174 - 176 specifically provide the procedure to be followed when custodial death occurs due to any reason, empowers the magistrate to summon persons for investigation of such death and initiates an inquiry into the exact cause of death.

Provisions for custodial rape have been included in Indian Law after the tragic Mathura Rape case (1972)<sup>19</sup>, Rameeza Bee Case (1978), and Maya Tyagu Case (1980)<sup>20</sup>. With the 13<sup>th</sup> Criminal Law Amendment, 2013, whenever a person in authority or a public servant commits the offence of rape to a woman prisoner, he is liable to a maximum of 10 years imprisonment<sup>21</sup>. An inquiry regarding the same can be initiated by the Magistrate under Section 176 (1A) of the Criminal

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<sup>17</sup> Indian Penal Code 1860, s 348

<sup>18</sup> Indian Penal Code 1860, s 330; Criminal Procedure Code 1973, s 163

<sup>19</sup> *Tuka Ram and Anr v State of Maharashtra* (1979) AIR 185

<sup>20</sup> *Sheo Kumar Gupta & Ors v State of UP* AIR (1978) ALL 386

<sup>21</sup> Indian Penal Code 1860, s 376C

Procedure Code, 1973. In such cases, if the sexual intercourse is proved and the victim declares that her consent was not taken, then it shall be presumed that consent was absent<sup>22</sup>.

## CONCLUSION

Custodial death acts as a black spot on the police force or the armed forces of the country. The main reasons behind it may be pointed out to overcrowding in prisons, suicide, fighting between the prisoners, improper medical assistance in case of injury, traditional methods of torture as a method for discipline, lack of proper training of the investigating officers, and lack of supervision during the inquiry. Personal bias towards a certain gender, colour, or caste also acts as a major reason for death in custody. Even with the prevailing statutory provisions both nationally and internationally, custodial death often goes unreported, or even if reported, the concerned authority is made to face only disciplinary actions rather than criminal punishment. This is evident from the custodial death statistics released by the National Human Rights Commission for the year 2021-22 in which 2150 cases were reported but only 21 disciplinary actions have been taken against the authority and a small amount of compensation was provided in 137 cases.

Custodial death is a sad side of the law and order of a state. As a citizen, we can contribute towards its eradication by putting a stop to media trials. The law presumes a person to be innocent until proven guilty and the same principle should be followed by the mass. In this way, we not only help in the fair inquiry of the case but also prevent the psychological state of the accused from deteriorating. This could prove a drop in the cases of custodial death due to suicide. It can be observed that there is not a lack of laws preventing and investigating custodial deaths but there is a lack of implementation. Better implementation along with a curb on corruption can act as a ray of hope for the prisoners.

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<sup>22</sup> Indian Evidence Act 1973, s 114(A)