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POLICE VIOLENCE AND CUSTODIAL DEATHS: REDUCING BILL OF RIGHTS TO CHARTER OF SERVITUDE

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ABSTRACT

All over the world, the frequency of police violence has been rising significantly. Authoritarian policing systems has emerged in the aftermath of the Covid-19 pandemic lockdown. It is pertinent to note that the tactics of police are not in alignment with the modern-day constitutional ideals and principles. Unfortunately, India too has to deal with challenges like police brutality and violations of human rights. The horrific deaths of a father and son while under the custody of the Tamil Nadu Police has sparked worries about the wrongdoings of police officers around the country. The procedural safeguards that citizens have against police enforcement have also been questioned. The entire episode of killings in custody has effectively plunged India's rule of law regime into an existential crisis. It has revealed grave issues regarding the institutional structure of our democracy.

The abuse of institutional protections to which citizens are entitled has been linked to police aggression, as the authors of this research have shown. The writers have also looked at the state of each institution independently, as well as the reasons behind its incapacity to effectively protect people's fundamental rights. The authors of this piece have finally provided solution to the queries posed above.

KEYWORDS- Brutality, Torture, Custodial violence.

INTRODUCTION

“Custodial torture is a naked violation of human dignity and degradation which destroys, to a large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded,

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*civilisation takes a step backward- flag of humanity must on each such occasion fly half-mast.”*³

Concern over the murders of a father and son in a Tamil Nadu Police Station has been voiced by innumerable human rights groups across the country. The extent of torture and abuse that the police personnel subjected the victims while they were in their custody has drawn severe criticism. These recent happenings have thrust police brutality and custodial torture back to the forefront of India's human rights policy discourse. Furthermore, these incidences have brought up more significant issues regarding the condition of the rule of law in our evolving democracy. Regardless of how appalling the police conduct in Tamil Nadu appeared at the time, these kinds of situations are common in our democracy. According to the N.C.R.B., over 1303 people either disappeared or died while in the police's custody between 2005 and 2017.⁴ Until 2018, an additional 144 people had passed away while in the custody of the police.⁵

The Apex Court has endeavoured innumerable times to prevent such egregious breaches of human rights. Prior to trying to regulate arrest processes by applying particular guidelines to restrain such arbitrary actions, the Supreme Court highlighted the arbitrary character of arrest operations.⁶ These protections were clarified and enhanced in the *D.K. Basu* case, when the court additionally accorded several further rights to the person who had been arrested.⁷ The CrPC finally included these instructions.⁸ In addition, the Indian Constitution gives the individual who has been arrested a variety of rights under Article 22.⁹ Of these, the most important is the right to appear before a magistrate within twenty-four hours of one's arrest for someone who has been held.¹⁰ Additionally, the right to a medical checkup is also granted in certain situations. But the data on fatalities that transpire during a person's incarceration presents a horrifying image of how the laws meant to safeguard the rights of those who are detained are actually implemented. It shows how receptive the public is to the atrocities committed by police enforcement while they are being held in custody. It has also left many wondering why, in spite of the legislature's and the judiciary's utmost efforts, the issue of torture in detention that results in human rights abuses is still so pressing. Many individuals may believe that their rights are being violated because many of these law-enforcing authorities were granted unrestricted power when they were British

³ *D.K Basu V. State of West Bengal*, 1997 (1) SCC 416.

⁴ Excerpts from the W.P.(Crl.) No. 354/2019, Live Law, available at https://www.livelaw.in/pdf_upload/pdf_upload-369455.pdf (last visited Aug. 12, 2023).

⁵ *Custodial crimes*, N.C.R.B available at <https://ncrb.gov.in/hi/crime-in-india-table-addtional-table-and-chapter-contents?page=18> (last visited Aug 01, 2024).

⁶ *Joginder Kumar vs State Of U.P.*, 1994 (4) SCC 260.

⁷ *D.K Basu V. State of West Bengal*, 1997 (1) SCC 416.

⁸ Code of Criminal Procedure (Amendment Act) 2005.

⁹ Indian Constitution. art 22, provides following “Protection against arrest and detention in certain cases-

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate

(3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention....”

¹⁰ *Id.*

colonists, and unfortunately, they still carry colonial baggage from that period.¹¹ Furthermore, the same was recognized by our founding fathers as a necessary evil for the management of our democracy.¹²

The authors believe that adequate legislative and judicial action has been done to hold police officers accountable for their brutal acts and to address the colonial mindset that underlies their actions. The accountability systems' execution has been appallingly inadequate. In order to shed light on the current condition of police brutality, the authors of this study have discussed three different aspects of poorly implemented policies. First, the authors have talked about the mechanical approach of judicial magistrates in regards to the first production of an arrested person and the issuance of police custody. Additionally, we have also mentioned the way in which magistrates investigate deaths that take place when an individual is detained. Second, the authors have argued that the police authorities have been granted carte blanche and that the most vulnerable inhabitants' rights have been violated by the human rights protection body's restricted jurisdiction. Lastly, the authors have argued that the legislature's poor implementation of Apex Court decisions and tardiness in passing new laws have contributed to a number of tragic incidents of police brutality.

CUSTODIAL DEATH AND FAILURE OF JUDICIAL MAGISTRATES

Our colonial heritage is sombrely brought to memory by the horrific killing of father son duo in Tamil Nadu custody. The origins can be traced to colonial legal form experiments. In the early 19th century, while the East India Company was consolidating its power, its officials experimented with fusing parts of 'local' law and jurisprudence from both Hindu and Muslim traditions. But, dissatisfied with what they saw as internal contradictions and a lack of decisive penalties, they started to resort to harsher legal measures, such as the regular application of the death penalty and the construction of public gallows throughout India to convey to the colonized people that British law was rigorous and uncompromising. The colonial-era repressive machinery is still in use by the police force, which is legally governed by the Police Act of 1861.¹³ The colonial era police system was established using the Irish colonial paramilitary police standard. The police system of colonial times served to rule the subjects, not the citizens.¹⁴ The subjects have no legal remedy against the state and are unable to hold it responsible for any mishaps.

However, everything changed on January 26, 1950. The Indian Constitution went into effect. Individuals were now citizens rather than merely subjects. Citizens now have fundamental rights that they can exercise even in opposition to the government, thanks to the adoption of the new Constitution.¹⁵ Many people have referred to

¹¹ Tripurdamani Singh, *Sixteen Stormy Days* 13 (Penguin Random House India, New Delhi, 1st edition, 2020.)

¹² Vol 14/1, Jawaharlal Nehru to Sardar Patel 4 March 1950, S. Gopal edited, *Selected Works of Jawaharlal Nehru* pg-462, (Jawaharlal Nehru Memorial Fund. 1992.)

¹³ G.P Joshi, *Police Accountability in India*, C.H.R.I available at https://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/police_accountability_in_india.pdf (last visited Aug. 14, 2024).

¹⁴ Id.

¹⁵ *Constituent Assembly Debates*, Volume III, 29 April 1947.

our Constitution as the most comprehensive statement of human rights drafted by any state to date. It ensured that the fundamental rights of even the most marginalized segments of our society would be protected.¹⁶ Our new Constitution guaranteed us independence from our colonial past.¹⁷ The new Constitution guaranteed rights against abuses by the state, such as unjustified incarceration. A clause provided that no one may be detained without permission.¹⁸ According to Article 22 of the Constitution, which gives the judicial magistrate special authority for this purpose, every person who is arrested and placed in custody must appear before the closest magistrate within twenty-four hours of the arrest, excluding the time required for transportation from the place of arrest to the magistrate's court. No such person may be held in custody after the aforementioned period without the consent of a magistrate.¹⁹ This provision obliged the magistrate to ensure that no one is detained without a warrant since it infringes against the right to life of a person.²⁰

Over time, the core provisions of the Constitution were deemed inadequate, and people's fundamental rights continued to be violated when they were being detained by the police. In order to ensure the protection of a detenu's rights, the Apex court provided comprehensive provisions in the D.K. Basu case²¹ These regulations were also added to the CrPC. In accordance with these guidelines, the judicial magistrate was given several duties to protect the detenu from mistreatment while in police custody. The most important of all was the assignment of police custody. After being placed under arrest, a person has twenty-four hours to appear before a magistrate.²² In this instance, the police request that the person in custody be given more time to allow them to finish their investigation. In accordance with these guidelines, the judicial magistrate was given several duties to protect the detenu from mistreatment while in police custody. The most important of all was the assignment of police custody. After being placed under arrest, a person has twenty-four hours to appear before a magistrate. In this instance, the police request that the person in custody be given more time to allow them to finish their investigation. Nonetheless, the magistrate must decide whether or not such custody is necessary in line with Section 41 of the Criminal Code.²³ Section 41 forbids the arrest of an individual when the offense

¹⁶ Constitution of India Analysed, Times of India, 26 January 1950 at B8.

¹⁷ A.G Noorani, Challenges to Civil Rights Guarantees in India 5 (Oxford University Press, New Delhi, 1st edition, 2012).

¹⁸ Supra note 11, p-8.

¹⁹ Supra note 9.

²⁰ Indian Constitution. art 21, provides as follow “*Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law*”.

²¹ *D.K Basu V. State of West Bengal*, 1997 (1) SCC 416.

²² Supra Note 9.

²³ Code of Criminal Procedure 1973 § 41, provides as follow “(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person--

[(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely: --

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary--

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence;

is not serious and the accused poses no threat to the investigation. It is also up to the magistrates to decide if the person was legitimately detained. whether he been subjected to torture while in police custody? If a magistrate believes that a procedure is not being followed appropriately, he has the power to liberate an accused person at any time.²⁴

But much like with the father-son duo, criticism has been levelled at the magistrate's approach. The magistrate in the case gave the police custody without taking into account the injuries sustained by the two individuals.²⁵ Police custody is often granted by magistrates automatically, without recourse to their discretion.²⁶ Lord Atkin in one of his judgments observed that because the magistrates are unable to understand their own obligations, they behave more like the executive than the executive itself.²⁷ The magistrates are unable to see that they are the arbiters of justice as well as the first line of defence against police misconduct. Furthermore, they are often the sole ones protecting individuals from police abuses and torture while they are in custody. The Apex Court's declaration that an accused individual may only be held for more than twenty-four hours throughout the course of an investigation into a matter if the magistrate has the jurisdiction to do so in compliance with Section 167 CrPC makes clear the importance of magistrates as guardians of the people's rights. Detention authorization is a highly important duty. Given that it affects citizens' freedom and liberty, it must be handled extremely carefully and thoughtfully. Our experience suggests that the appropriate gravity is not being applied. Authorization for detention is often granted in a casual, standard manner. Before granting permission for detention under Section 167, CrPC, a magistrate must first be persuaded that the arrest was legal, that the person arrested has all of their constitutional rights upheld, and that the arrest complies with the law. If the arrest complies with Section 41 of the Code, the magistrate is required to refuse to approve the police officer's continuing detention and to release the accused.²⁸

To further curtail the power of the police, magistrates have been assigned a plethora of extra responsibilities during criminal investigations. This includes the power to supervise investigations. It was previously contended that nowhere in the CrPC were magistrates granted the authority to supervise investigations. But in

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]"

²⁴ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

²⁵ Manu Sebastian, Jeyaraj-Bennix Custodial Deaths: Questions About Lapses of Magistrate in Ordering Remand, Live Law available at [://www.livelaw.in/columns/jeyaraj-bennix-custodial-deaths-questions-about-lapses-of-magistrate-in-ordering-remand-158998](http://www.livelaw.in/columns/jeyaraj-bennix-custodial-deaths-questions-about-lapses-of-magistrate-in-ordering-remand-158998) (last visited Aug. 12, 2024).

²⁶ *Manubhai Ratilal Pater Tr. Ushaben vs. State of Gujarat* (2013) 1 SCC 314.

²⁷ *Liversidge v Anderson* [1942] AC 206.

²⁸ Supra note 24, p-11,12.

the Sakiri Vasu decision, the Apex Court found this authority under Section 156(3) of the CrPC.²⁹ With the use of the case diary, the magistrate can use this authority to supervise the investigation to safeguard the integrity of the prosecution and ensure that the accused is treated fairly.³⁰ All these statutory rules have demonstrated to us the evolution of a protectionist mindset in our police investigation mechanism as well as the shift in our social circumstances. These laws have tried to safeguard the interests of the accused in spite of the horrible accusations that were made against them. These provisions try to stop the accused from being tortured while under police custody or while an investigation is ongoing. To achieve this goal, the judicial magistrates have been given extensive authority to supervise the investigation in an adversarial criminal justice system.

The Apex Court did point out that these sections are meaningless due to the mechanistic approach of the magistrates. The tragic occurrences of the past several years have made it clear that judicial magistrates must be held accountable. Even in Tamil Nadu, protests were staged in response to a custodial death in order to hold the magistrate accountable for his callous handling of such a serious case.³¹ Even if it appears that there isn't a statute that can specifically define a magistrate's duty in these circumstances. In *Arnesh Kumar v. State of Bihar*, the Supreme Court did, however, decide that magistrates can be charged with misconduct if they neglect to perform their obligations with relation to arrest and detention.³² In other words, before allowing the accused's custody, the magistrate must read the police report in compliance with the previously indicated requirements; only then can the magistrate note that the accused has been satisfied. If the judicial magistrate who approved the custody did not provide documentation for the reason for the imprisonment, the relevant High Court may initiate administrative action against them. Magistrates will be held more accountable as a result of this Supreme Court decision. Furthermore, the Supreme Court's decisions may prove to be very helpful in the future in clarifying the rights and limitations of an arrested individual.

Another aspect of custodial cruelty in which judges have a significant role is investigating deaths that take place while a person is under police custody. When someone passes away while in police custody, the circumstances surrounding the death need to be investigated by police investigators. Nonetheless, it could be unreasonable to anticipate a fair conclusion from such investigations given the strong sense of fraternity that police personnel share with one another. In cases of police torture or custodial death, direct ocular evidence of the police personnel's cooperation would rarely be accessible, as the Apex Court later recognized. The only people who can usually explain the circumstances surrounding the death of someone who is in their custody are law enforcement officers. Because of their deep sense of brotherhood, police officers are known to prefer to remain silent and often misrepresent the facts in order to defend their colleagues.³³

²⁹ *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409.

³⁰ *Id.*

³¹ *Supra* Note 25.

³² *Supra* Note 24.

³³ *State of Madhya Pradesh vs Shyamsunder Trivedi*, 1995 (1) Suppl. SCR 44.

In accordance with the suggestions made by the Law Commission of India in its 152nd report,³⁴ the CrPC now includes special provisions that guarantee an impartial inquiry into deaths that occur while a person is in custody. Sections 176 (1A)³⁵ and 176(5)³⁶ were added to the CrPC in 2005 as a result of an amendment, enabling a judicial or metropolitan magistrate to look into a death that happens while a person is being held concurrently. Even if it's a parallel study, it's necessary. However, the documentation also presents a quite bleak picture of the implementation of this clause. Only twenty percent of rape and custodial death cases have been brought by the magistrate.³⁷ There is no longer any fear or deterrence, which has resulted in grave injustice and given police officers more latitude. Court magistrates are equally accountable for both police brutality and correctional mortality due to their mechanical approach. They often overlook the fact that they are the first and sometimes the last line of defence for the individual who is being held. Therefore, the way these magistrates make decisions needs to be altered in order to ensure a cap on deaths while in prison and incidents of police brutality.

NATIONAL HUMAN RIGHT COMMISSION'S FAILURE AND CUSTODIAL DEATHS

One major factor contributing to the rise of human rights breaches in police custody in India is the poor functioning of institutional processes. Following its ratification on January 26, 1950, the Indian Constitution came to be known as the largest liberal experiment in democratic governance.³⁸ It's interesting to note that this Constitution was drafted with consideration for the 1948 Universal Declaration of Human Rights.³⁹ The citizens were granted every right conceivable in a liberal democracy. The mechanisms put in place to protect these rights were far from perfect, though. Upholding the rights of individuals has been entrusted to the higher judiciary.⁴⁰ But common individual often lack access to these higher courts because of India's distinct standard of living. The institution that could protect these individuals' human rights has also been aided by persistent police brutality, both before and after emergencies, and the fact that vulnerable citizens are unable to approach higher courts due to a lack of procedural knowledge and comprehension.⁴¹ As a result, the National Human

³⁴ Law Commission of India, Custodial Death, Report no-152, 1994.

³⁵ Code of Criminal Procedure 1973 § 176 (1A), provides as follow “1A. Where, -

1. any person dies or disappears, or
rape is alleged to have been committed on any woman, while such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court under this Code, in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.”

³⁶ Code of Criminal Procedure 1973 § 175 (5), provides as follow “The Judicial Magistrate or the Metropolitan Magistrate or Executive Magistrate or police officer holding an inquiry or investigation, as the case may be, under Sub-Section (1A) shall, within twenty-four hours of the death of a person, forward the body with a view to its being examined to the nearest Civil Surgeon or other qualified medical person appointed in this behalf by the State Government, unless it is not possible to do so for reasons to be recorded in writing.”

³⁷ Supra note 4.

³⁸ Supra note 11 at xvi.

³⁹ UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>. (last visited Aug. 22, 2024).

⁴⁰ Granville Austin, *The Indian Constitution: Cornerstone of the Nation* 12 (Oxford University Press, New Delhi, 1st edition, 1966).

⁴¹ K.G. Kannabiran, *The Wages of Impunity: Power, Justice and Human Rights* 4-7 (Orient Longman, New Delhi, 1st edition, 2004).

Rights Commission was established under the Protection of Human Rights Act of 1993.

These groups are known in modern political and legal theories as fourth branch institutions. These institutions are intended to supervise the complex political system and manage state authority.⁴² In a same spirit, the N.H.R.C. has been in charge of defending people's basic rights. Furthermore, the law also establishes State Human Rights Commissions for protecting the rights of the citizens. However, these institutions still perform below expectations even after being in existence for more than 25 years. A great deal of attention and criticism has been directed against these groups. The main reason for this criticism of N.H.R.C. is that it has power restrictions and capacity limitations. The commission was dealing with over 40,000 cases at the time of the 2016 report.⁴³ This kind of backlog is mostly the result of N.H.R.C.'s dependence on the government. The National Human Rights Commission is a fourth branch that must remain independent of the government, yet the government is its only supply of human resources.⁴⁴ S.H.R.C.'s function is similar in that state governments are in responsible of hiring staff members for the organization. All of this results in untimely appointments and vacancies in some of the most significant roles within the organization. This ultimately leads to backlog of cases and inappropriate working circumstances. Funding is another issue, as the organization also depends on the government for this. This too affects the organization's dependability and operational efficiency. Consequently, the NHRC dependency upon the government has led to the organization's decline and an increase in the number of state personnel abusing disproportionate force without justification. This further results in even more horrible violations of human rights committed against the most vulnerable inhabitants of this amazing democracy.

The National Human Rights Commission (NHRC) was established to defend human rights and provide redress to those whose rights have been violated. However, Section 18 of the Act severely limits the authority of institutions. This Section outlines the steps the commission may take after conducting a rights violation investigation. In other words, the clause has reduced the commission's actions to simple recommendations. - The course of the inquiry and its aftermath. Following the conclusion of an investigation conducted in accordance with this Act, the Commission may do any of the following actions- In cases where the investigation reveals that a public servant violated human rights or was negligent in preventing violations of rights or aiding and abetting such violations, it may advise the relevant government or authority to: (i) Pay the complainant, the victim, or the victim's family members any damages or compensation the Commission deems

⁴² Gautam Bhatia, Giving Human Rights Commissions more teeth, *The Hindu* available at [thehindu.com/opinion/lead/giving-human-rights-commissions-more-teeth/article31111463.ece](https://www.thehindu.com/opinion/lead/giving-human-rights-commissions-more-teeth/article31111463.ece) (last visited Aug. 25, 2024).

⁴³ Sanjoy Hazarika, NHRC A Toothless Tiger, Commonwealth Human Right Initiative available at <https://www.humanrightsinitiative.org/blog/nhrc-a-toothless-tiger> (last visited Aug. 14, 2024).

⁴⁴ The Protection of Human Right Act 1993, § 11 Provides as follow- "*Officers and other staff of the Commission.—(1) The Central Government shall make available to the Commission— (a) an officer of the rank of the Secretary to the Government of India who shall be the Secretary-General of the Commission; and (b) such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission. (2) Subject to such rules as may be made by the Central Government in this behalf, the Commission may appoint such other administrative, technical and scientific staff as it may consider necessary. (3) The salaries, allowances and conditions of service of the officers and other staff appointed under sub-section (2) shall be such as may be prescribed.*"

appropriate; (ii) To file charges against the concerned person or people, or take any other appropriate action the Commission deems appropriate; (iii) To take any additional action it deems appropriate.⁴⁵

This section gives the government total authority to accept or reject the recommendations made by the N.H.R.C. These recommendations are typically accepted by governments, though on occasion they could be rejected. The commission's proposed course of action is frequently disregarded by the state even after it has been made available. This typically occurs when punitive action is taken against a government employee.⁴⁶ It also results in continued human rights violations by state employees since there is little fear of future action or deterrence. This viewpoint essentially restricts the goals and methods of the N.H.R.C.

The N.H.R.C. has been compared to a toothless tiger by the Supreme Court due to this provision and its interpretation alone. Stated differently, we have little doubt that this influential entity has, tragically, been reduced to mere insignificance, given that it has exposed its issues through affidavits and written submissions made to this Court. The NHRC's ability to carry out its mandate will be severely hampered, and needless criticism regarding our country's respect for human rights will also arise, if the Union of India does not promptly and favourably accept and consider any request made by the NHRC in this regard.⁴⁷

The Apex Court's comments and the goal of the Act as a whole—the protection of human rights—should therefore be taken into consideration by the courts when interpreting the language suggested in Section 18 of the Act. Therefore, rather than being discretionary, heeding such advise should be mandated. Such an interpretation would ensure required action against the accused official, so having a deterrent impact on other state officials. Additionally, it will impose more limitations on horrible human rights abuses such as those that have recently taken place in Tamil Nadu.

CUSTODIAL DEATH AND LETHARGIC APPROACH TO LAW IMPLEMENTATION

Police brutality is a disgrace to our legal and democratic processes. In essence, it occurs because our governance apparatus is unable to stop these kinds of tragedies. It usually occurs because the executive branch is unable to implement and expand upon various court decisions regarding police violence.⁴⁸ It also stems from the government's incapacity to enact new laws that deal with specific important areas of police violence. When it comes to cases involving police wrongdoing, our Supreme Court, which has continuously placed a high value on individual dignity, has repeatedly displayed an excessive amount of sensitivity. The escalating number of deaths that take place while a person is in police custody has been seriously questioned by the court on multiple occasions. In the case of *Re Inhuman Conditions v. State of Assam*, the Supreme Court made the following observation: *“Despite numerous rulings from this Court and possibly every other High Court across the nation, there appears to be no decrease in the number of deaths that occur in custody. These cases are*

⁴⁵ Ibid, § 18.

⁴⁶ Supra note 43.

⁴⁷ *Extra Judi. Exec. Victim Families Assn. V. Union of India*, WRIT PETITION (CRL.) NO. 129 OF 2012, Para 44.

⁴⁸ *D.K Basu V. State of West Bengal*, 1997 (1) SCC 416, *Joginder Kumar vs State Of U.P.*, 1994 (4) SCC 260.

both documented and undocumented. This is a tragic, not a depressing, condition of affairs that shows how little the condition seems to care for the lives and liberties of people, especially those who are detained. The opportunity to make things right has long since passed, but there doesn't seem to be any desire to do so, and as a result, no end in sight."⁴⁹

Therefore, in an attempt to protect people's integrity and dignity from abuse while they are in prison, the Apex Court has rendered multiple rulings and imposed a number of regulations. The most significant of these were the arrest guidelines from the D.K. Basu ruling,⁵⁰ which were included into the CrPC. But another important decision from the Supreme Court that can restrict the use of force and lessen violence against prisoners is *Prakash Singh v. Union of India*.⁵¹ One of the guidelines for police reforms that the Apex Court has offered in this decision is the State Security Commission's constitution, which limits the government's excessive influence or burden on the police. Secondly, defining a defined tenure for operational duty police inspectors and fixing the duration of the D.G.P.⁵² Thirdly separating investigation from law and order. The most important directive of all was the creation of police complaint authority. The Police Complaints Authority at the district level would look into complaints against police officers up to the rank of Deputy Superintendent of Police, according to the Supreme Court's description of the authority's duties and jurisdiction. Likewise, the State ought to create a second Police Complaints Authority to look into complaints against superintendent of police and higher-ranking police officials. The state level authority may be headed by a retired judge from the High Court or Supreme Court, and the district level authority may be headed by a retired district judge. The court further ruled that "only allegations of serious misconduct by the police personnel, which would include incidents involving death, grievous hurt, or rape in police custody, would be taken cognizance of by the State level Complaints Authority." Apart from the aforementioned situations, the Complaints Authority at the district level has the authority to investigate allegations of extortion, home or land grabbing, or any serious misuse of authority. The recommendations made by the Complaints Authority for any departmental or criminal action against a delinquent police officer, including at the district and state levels, shall bind the relevant authority.⁵³ Given the N.H.R.C.'s weight and the backlog of cases, these Supreme Court tenets can ensure the efficient and agreeable administration of justice. With the help of subject matter specialists, this topic-specific authority would be able to address the issue of torture in detention more specifically. Consequently, states were granted until December 31, 2006, to implement the court's orders and establish all the authorities that the court had stipulated. If the nations had properly implemented these proposals, police reforms would have been assured by anarchic pre-colonial police systems.⁵⁴ But the states didn't follow through. According to the Commonwealth Human Right Initiative's most recent report, only 17 states—after a considerable amount of

⁴⁹ *Re Inhuman Conditions v. State of Assam*, Writ Petition (Civil) No. 406 Of 2013.

⁵⁰ *D.K Basu V. State of West Bengal*, 1997 (1) SCC 416

⁵¹ *Prakash Singh vs Union of India*, 2006 (8) SCC 1.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

time—have formed police complaint authority.⁵⁵ Furthermore, when it comes to the selection of candidates for these positions, the guidelines set forth by the Supreme Court are ignored. In many states, these P.C.A.s are woefully understaffed. For this reason, looking into complaints takes years.⁵⁶ Therefore, the government must regularly support an institution that is so crucial to the defence of citizens' rights. If this institution were constructed in compliance with the Apex Court's directive, it might, in a sense, lessen the load on the N.H.R.C. It might also guarantee that the rights of the most vulnerable individuals are better safeguarded from abuse by law enforcement and while they are in custody. It will also ensure that the abhorrent acts that took place in Tamil Nadu would not happen again.⁵⁷

Human rights organizations have voiced grave worries about another issue in the wake of the events in Tamil Nadu: the lack of an anti-torture law in India. Police officers can use as much force as they think is necessary if there is no such regulation. India has a moral duty to enforce the United Nations Anti-Torture Convention⁵⁸ even though it is just a signatory to it. However, no law has been approved over the years, despite multiple attempts. In 2010, the Lok Sabha approved a bill prohibiting torture, however it only defined torture very narrowly. Torture was limited to causing considerable harm and risking someone's life, limb, or health (mental or physical) under Section 3 of the Bill. The Rajya Sabha was very critical of the same. They thought that in order to comply with the UN Convention and to include transgressions covered by the Indian Penal Code, the definition of torture was required to be suitably expanded. Furthermore, when it comes to torture, women and children should be given extra consideration, and it should be against the law to try to harm them. A public servant should encompass every agency or institution under the government. Consequently, the bill was turned down.⁵⁹ Then, in 2017, the Law Commission's 273rd report⁶⁰ suggested the introduction of a new act to carry out the United Nations Torture Convention, marking the next opportunity. A draft bill was also included in the study.⁶¹ This proposed bill has broadened the definition of torture. The report also recommends amending the Indian Evidence Act to include Section 114B, which addresses presumption.⁶² Any injury a person sustains while in the custody of the police is presumed to be the consequence of abuse by the officers.

⁵⁵ V.Venkatesanshivangi Mathew, Police reforms still largely only on paper, *Frontline* available at <https://frontline.thehindu.com/dispatches/article28960801.ece> (last visited on Aug. 16, 2024).

⁵⁶ Id.

⁵⁷ Arun Janardhanan, Explained: How Tamil Nadu Police's brutal act of revenge claimed lives of a father and son, *The Indian Express* available at <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/#:~:text=Tamil%20Nadu%20custodial%20deaths%3A%20Historically,and%20third%2Ddegree%20torture%20methods.&text=The%20death%20of%20a%20father,sparked%20rage%20across%20the%20state> (last visited on Aug. 18, 2024).

⁵⁸ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.refworld.org/docid/3ae6b3a94.html>. (last visited Aug. 28, 2024).

⁵⁹ Select Committee Report Summary the Prevention of Torture Bill, 2010, P.R.S Legislative research, https://www.prsindia.org/sites/default/files/bill_files/Prevention_of_Torture_Bill_2010_Standing_Committee_Summary_Report_Summary.pdf (last visited Aug. 1, 2024).

⁶⁰ Law Commission of India, Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation, Report no-273, October 2017.

⁶¹ Id.

⁶² Id.

Nevertheless, despite a lot of time having passed, many states still haven't provided a mandate about the draft measure.⁶³ This affects the most vulnerable people's right to be free from police torture and jeopardizes the draft measure. Thus, in order to protect citizens' rights from police abuse, the government needs to pass legislation prohibiting torture.

WAY AHEAD

Any society that identifies as democratic and upholds the rule of law must condemn itself in the eyes of the world for torture and deaths that occur during incarceration. It is imperative for our legal system to recognize that an individual's incarceration does not signify that he has given up his fundamental rights. Justice Krishna Iyer succinctly stated this point: *"This Country has no totalitarian territory even within the walled world we call prison. Articles 14, 19 and 21 operate within the prisons..... the state must re-educate the constabulary out of their sadistic arts and inculcate a respect for the human person –a process which must begin more by example than by percept if the lower rungs are really to emulate, then nothing inflicts a deeper wound on our constitutional culture than a state official running berserk regardless of human rights."*⁶⁴ The events that occurred in the state of Tamil Nadu have made everyone rethink our police force. It has also made us aware of how improperly public safety measures are applied in response to such horrible acts.

Ultimately the Union government revamped the existing criminal laws and that served as the cornerstone of India's criminal justice system. The new Acts have also been challenged in the Supreme Court. They received presidential assent on December 25, 2023, and it came into force from July 1, 2024. On December 20, 2023, the world's largest democracy declared that the colonial remnants of its criminal laws had been eliminated, just more than four months after the Bills were introduced and the same was passed without any significant parliamentary debate. However, legal experts and opponents of politics diverge on this issue. It is because the new codes do not call for any revolutionary changes to the way the nation is policed, crimes are investigated, or lengthy trials are carried out, there is a general consensus that the reforms did not amount to any decolonization of criminal justice. It is not merely a hassle for attorneys that this "vagueness" persists. Additionally, it permits a broad interpretation of the law, leaving room for a host of other social and political interests to exert pressure, abuse, interference, and lack of accountability beyond the legal system. Many Indians today accuse elected politicians working in tandem with dishonest authorities to bring about what they perceive to be "political interference" in all matters of justice. However, it is incorrect to see the extremely broad discretionary powers and ambiguous legal provisions of the Indian administrative and judicial system as remnants of a bygone (glory) era in which honourable and uncorruptible judges and officials upheld and administered justice. These persistent misrepresentations span the period from colonial to post-independence

⁶³ Gaurav Vivek Bhatnagar, SC Directs All States, UTs to Send Replies on Torture Bill Within Three Weeks, The Wire, available at <https://thewire.in/law/sc-directs-all-states-uts-to-send-replies-on-torture-bill-within-three-weeks> (last visited on Aug. 3, 2024).

⁶⁴ K.S.R. Dev v State of Rajasthan (1981)1 SCC 503.

India.⁶⁵

Unfortunately, the new law, which supersedes the CrPC, permits police custody to continue after the initial 15 days of an arrest; civil rights and legal advocates argue that this is a retrograde step that violates citizens' fundamental rights. If an investigation cannot be finished in a day, the jurisdictional magistrate may award police custody for up to 15 days under the Code of Criminal Procedure (CrPC). Nonetheless, police custody for a maximum of 15 days may be authorized in full or in part at any point within the first 40 or 60 days of the 60- or 90-day period of judicial custody, according to Section 187 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which aims to replace the CrPC. In cases where the offense carries a minimum 10-year jail sentence, the 15-day police detention may be divided over 60 days, or 40 days for other offenses. Human rights advocates fear that the clause may allow police to use their arrest power unfairly and to engage in extrajudicial actions. Prior to this, a person may only request police detention for a maximum of 15 days, and even then, only during the initial 15 days after the arrest. The police may request incarceration for periods more than 15 days under the BNSS. It appears to be a step backwards for police to be able to ask for detention during the first sixty days following an arrest. It contradicts citizens' fundamental rights.⁶⁶

If the police contend that they must return the person to their custody during this time, the new provision may result in bail being refused. One of the riskier parts of the new law is perhaps the one that extends police remand. This essentially removes the prior prohibition against requesting police custody as soon as the remanding magistrate awards court custody. Therefore, even after an accused individual has been given judicial custody, the magistrate has the authority to order that they be returned to police custody at any point after the initial 15 days of their detention. This extension exposes the accused to additional police torture, intimidation, and other risks, and it is a very serious violation of their rights to protections. The new law strikes to the core of Indian custodial jurisprudence, which has not trusted the police to protect those in their care. Modifying procedural laws may ultimately result in a violation of the moral principles and spirit of the Constitution. The new provision will severely impact citizens' fundamental rights.⁶⁷

It is therefore imperative that our legal system closes these gaps instead of increasing it and therefore applies the procedural safeguards correctly for the sake of the public. The only way we can achieve the goal of guaranteeing the proper implementation of procedural protections is by strengthening the institutions. Furthermore, the goal can be achieved by making the respective government responsible for these organizations' proper operation. The Higher Judiciary bears equal duty for supporting the institutions meant to curb abuses by the state. The goals and purposes of these organizations should be furthered by the courts'

⁶⁵ Eklavya Vasudev & Thomas Blom Hansen, Citizens and the State: Policing, Impunity, and the Rule of Law in India, *The Hindu*, available at <https://www.thehinducentre.com/incoming/citizens-and-the-state-policing-impunity-and-the-rule-of-law-in-india/article67887312.ece> (last visited July 24, 2024).

⁶⁶ R. Sivaraman, Concerns rise over BNSS provision on police custody, *The Hindu*, available at <https://www.thehindu.com/news/national/concerns-rise-over-bnss-provision-on-police-custody/article68344538.ece#:~:text=The%20new%20law%2C%20which%20replaces,to%20fundamental%20right%20of%20citizens> (last visited Aug. 4, 2024).

⁶⁷ *Id.*

interpretation of the law. Furthermore, in order for these organizations to effectively defend the rights of the people, the courts' evaluation of their needs must provide them greater authority.

Our Constitution gives the Higher Judiciary the authority to protect the rights of its citizens. Furthermore, in pursuit of the same objective, our courts have consistently taken an assertive position, safeguarding the rights of the most vulnerable citizens of our country. The courts have updated their procedural rules and operational system throughout this process.⁶⁸ Therefore, even in the lack of an anti-torture act in our legal system, one should expect that our Apex Court would uphold the principles of the United Nations Torture Convention⁶⁹ and provide guidance to limit the use of torture in police custody. This kind of approach is especially expected of the Apex Court, since it has already employed it in the Vishakha verdict.⁷⁰

In addition, the prevalence of police brutality frequently makes news these days. We need to hold organizations, police departments, and governments responsible if we want to restrict the same. Additionally, the judiciary ought to be proactive, and judges adjudicating cases involving police violence ought to keep these lines of Justice White [U.S. Supreme Court Judge] from the case of *Wolff v. McDonnell* wherein the learned judge observed that, “*A prisoner is not wholly stripped of constitutional protections when he is imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons.*”⁷¹

⁶⁸ Rajindar Sachar, "Social Action Litigation Activist and Traditionalist Judge" (1987)1 SCC Journal p. 13.

⁶⁹ UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, *available at*: <https://www.refworld.org/docid/3ae6b3a94.html> (last visited on Aug. 12, 2024).

⁷⁰ *Vishaka vs State of Rajasthan*, AIR 1997 SC 3011.

⁷¹ *Wolff v. McDonnell* [418 US 539, 555-6 (1974)]