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CUSTODIAL DEATHS AND POLICE BRUTALITY: ROLE OF JUDICIARY AND NHRC

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ABSTRACT:

In today's world violation of basic human rights have become very rampant, especially in the cases of Custodial Death, Police Brutality and Encounters, basically extra-judicial killings. These kinds of abhorrent acts are usually deemed as "Instant Justice". India, which is considered to be the largest democracy in the world, has failed to uphold the promises of the constitution to carryout transparency in extrajudicial incidents. The very purpose of rule of law and constitutionalism has not been entrusted in veracious manner. Over the years the term extra-judicial killings have gained popularity and has been misinterpreted. It wouldn't be wrong to say that these incidents have led to despotism form of government instead of democracy. Custodial tortures and brutality violate prisoners' basic rights.

"Encounter" has been misused by the police department in the name of 'SELF-DEFENCE'. Especially in country like India, it has gained lots of popularity and importance unfortunately its very prevalent even today. In most of the cases, encounters have been self-proclaimed as badge of honor to the concerned authorities, which also makes way for political mileage to the ruling and opposition parties who in turn give it an emotional and sentimental angle to it creating celebrations in the public in any high-profile cases. Over the years this has made the public to lose hopes and trusts in the judiciary. Despite several statutory provisions,

conventions, constitutional safeguards, directions of the supreme court, the cases of custodial death and police brutality have not come down and has been rampant till date. Judiciary and other agencies have a huge responsibility on back of their shoulders to gain back the trust of the public and upload the constitution and vindicate the rule of law concept.

KEYWORDS: Human Rights, Encounters, Brutality, Extra-Judicial Killings, Custodial tortures.

I. INTRODUCTION

The term 'torture' is a Latin term 'tortus', which is an act of punishing to extract the leads while interrogating the case by way creating severe pain which can be physical/mental form. The last stage of torture is known as "Third Degree Technique", which is unimaginable treatment, which includes nail hammerings, damaging private parts, electrocuting, sexual acts etc. Despite few statutory provisions, international conventions, constitutional safeguards, directions of the supreme court the cases of custodial death and police brutality have not come down. Human Beings are expected to have certain basic rights and liberties and entitled with basic political, economic, social rights which needs to be promoted and protected the state machineries, regrettably men on duty violate few human rights by way of extra judicial killings, these killings aren't something done in law courts, over use of powers by law enforcing agencies like police department can lead to indiscriminate firing, strafing etc. The very basic fundamentals of the term custody imply protective care and guardianship in the civilized system of law. However, no civilized system of law authorizes custodial cruelty, it is nothing less than abhorrent crime in the civilized society. Custodial torture undoubtedly violates basic rights of the prisoners to uphold the human dignity. Police department play a very essential for any criminal investigation, at the same time

they have a corresponding duty to protect and safeguard the liberty and freedom of the prisoners who have been arrested and uphold the human dignity and to protect the human rights of the arrested person, most importantly in the system of rule of law³⁹⁹ even the police department are beneath the law and not above, any violation of the human rights can make the police liable. India being the largest democracy in the world has been witnessing drastic increase in crime rates through the country which includes harassment of the public by the concerned authorities and custodial torture which has been rising eventually over the years. The role of judiciary, National Human Rights commissions, law enforcing authorities along with public interests' groups have to create big impact and have a huge to play.

Custodial torture has grown so frequent in recent years that not just the police and bureaucracy, but also the general public, accept it as a standard police interrogation procedure. As a consequence, the emergence of such heinous behaviour generates little more than a brief shock in society. When something heinous occurs, the public gets outraged. Only then does the government take note of the incarceration torture, when the public uproar forces them to do so.

India's foundations are secularism, socialism, sovereignty, and democracy. In a democracy, the police are supposed to protect citizens rather than torture them. The Indian Constitution places a high value on fundamental rights. "No one shall be deprived of his life or personal liberty unless in accordance with the provisions of this article, procedure mandated by law."⁴⁰⁰ As a result, personal liberty is seen as a treasured and prized value under constitution. When law enforcement officers are entrusted with the safety of mankind, and instead of defending it, they

break the law. Only with the cooperation of both the officers and the general people can we build a robust and healthy democracy free of human rights violations. The objective of police is to create a secure and orderly environment in which people can exercise their freedom. When lawmakers and enforcers become lawbreakers and champions of human rights become persecutors, democracy is jeopardised. In a free society, the protection of an individual against torture and abuse by police and other law enforcement agents is a major concern. As remand deciders, magistrates. Both the police and the judiciary must be exceedingly attentive. When a Magistrate signs off on anything, it's called "authorization."

When an accused individual is remanded to police custody, he must guarantee that the constitutional and legal requirements are met. The accused's statutory rights are not infringed upon. If the same thing happens, it is up to the Magistrate to preserve the rights of the people. It is the responsibility of the accused individual to take the initial action in this respect. The Magistrate is the one who hears the case. The police produce the apprehended suspect after arrest or when the police custody period has ended.

II. ROLES AND FUNCTIONS OF JUDICIARY IN INDIA

Legal executive through various imaginative affirmations laid out custodial law in managing custodial offenses in police authority. It includes erratic arrest and detainment, uncaring strategies of Interrogation or torture in authority, compensation to the casualties of custodial violations and arraignment and discipline for torturer. In a vital instance of *Joginder Kumar v. Province of Uttar Pradesh*⁴⁰¹, the Supreme Court has thought about the power of arrest by police and noticed: "No arrest might be affected in a customary manner on a basic allegation of commission of a wrongdoing made against an

³⁹⁹ ALBERT VENN DICEY, Introduction to the study of the law of the constitution, Macmillan and Co., Limited, 1902.

⁴⁰⁰ INDIAN CONST. art 21.

⁴⁰¹ *Joginder Kumar v. Province of Uttar Pradesh*, 1994 Cr. L.J. 4SCC 260.

individual. it ought to be judicious of police in light of a legitimate concern for insurance of the protected privileges of a resident and maybe to his greatest advantage that no arrest ought to be made without a sensible fulfilment came to after some examination regarding the validity and bonafides of a grumbling and a sensible conviction both regarding the individual's complicity and all things considered with regards to the need to impact arrest. Denying an individual of his freedom is an extreme concern. The recommendations of the Police Commission just mirror the sacred concomitants of the essential privileges to individual freedom and opportunity. An individual isn't helpless against arrest just on the charge of inclusion in a wrongdoing. There should be a few significant grounds in the judgment of the official executing the arrest that such arrest is important and justified. Besides in genuine demonstrations, a arrest should be stayed away from assuming police sends notice to somebody to visit the Station House and not to leave station without approval would do." Further the Supreme Court noticed: A blamed individual being held in authority is entitled, assuming that he so demands to have one companion , family members or other individual who is known to him or liable to look into his government assistance told similarly as is practicable that he has been arrested and where is being confined; The police will illuminate the arrested individual when he is brought to the police headquarters of this right; A passage will be expected to be made in the Diary concerning who was educated regarding the arrest. These shields against power should be perceived to follow from Article 21⁴⁰² and 22 (1)⁴⁰³ and applied solidly. It will be the commitment of the Magistrate, before whom the arrested individual is introduced to persuade himself that these circumstances have been satisfied with.

In a circumstance relating to custodial attack and confinement of female individual, the court in the case of Sheela Barse v. State of Maharashtra⁴⁰⁴ has provided the accompanying appropriate requests as under:

- Four or five police lock ups ought to be chosen in the sensibly great regions where just female suspects ought to be kept and they ought to be watched by female constables.
- Female suspect ought not be kept in a lock up in which male suspects are confined.
- Interrogation of female suspects ought to be completed distinctly within the sight of female polices/constables.
- Whenever a suspect is arrested by the police and taken to the police secure, the police will promptly give hint of the reality to the closest lawful guide board.
- Surprise visits to the police lock ups in the city ought to routinely be performed with the end goal of arrested individual an opportunity to hear their interests and decide the conditions of police secure.
- As soon as an individual is arrested, the police should quickly acquire from him/her the name of any family member or companion who he/she might want to be educated about his/her arrest and the police ought to reach out to such family member or companion and illuminate him about arrest.
- The Magistrate before whom a arrested individual is created will enquire from the arrested individual whether he has any grumbling of torture or abuse in police authority. The Supreme Court essentially broadened the right against self - implication during addressing in police confinement in its various decisions.

In Case of Nadini Satpati v. P.L. Dhani⁴⁰⁵ the Court held that the right against self-implication and right to life of accused. It is laid out that assuming there is any sort of strain,

⁴⁰² INDIAN CONST. art 21.

⁴⁰³ INDIAN CONST. art 22, cl. 1.

⁴⁰⁴ Sheela Barse v. State of Maharashtra, AIR 1983 SC 378.

⁴⁰⁵ Nadini Satpati v. P.L. Dhani, A.I.R. 1978 SC 1075.

unobtrusive or rough, mental or physical, immediate or backhanded, however adequately huge, applied by the police in getting data from the charged, it establishes forced declaration violative of the right to life and personal liberty. The court likewise reasoned that pressure might be gathered with regards to custodial addressing by the police "except if explicit securities wiping out coercion are complied with." It moreover expressed that the police need to let a legal counsel or to help the accused on the off chance that he can bear the cost of one. In any case, it didn't articulate that the state is under an obligation to give a guidance to the blamed assuming he is dejected. It additionally acknowledged the option to quiet against self - implication. The denounced isn't committed to respond to self - incriminatory inquiries. Yet, he doesn't have right to add up to calm. As such non-incriminatory inquiries might be presented and the charged "will undoubtedly answer when there is no evident tendency to criminative".

III. HOW JUDICIARY HAS CREATED IMPACT FOR CUSTODIAL DEATHS AND POLICE BRUTALITY?

The apex court of the country in *Bhagwan Singh vs. Province of Punjab*⁴⁰⁶ has seen that it could be a genuine right of any police to question or arrest any suspect on some believable material however such arrest should be as per the law and the cross examination doesn't mean incurring wounds. It ought to be genuine importance intentional, specifically, to make the exploration powerful. Torturing an individual and using third degree strategies are of middle age nature and they are savage and against to regulation. The police would accomplish behind their shut entryways precisely what the requirements of our overall set of laws block. They should utilize a few logical methodologies than turning to actual torture. The Court additionally noticed " in the event that the caretakers of equity themselves participate in carrying out wrongdoings, no individual from

the local area is more secure and get". Not many occurrences of custodial viciousness come to the court. In any event, when official indictment is begun by the person in question or closest relative, no immediate proof is accessible to substatante the case of torture bringing about death, since the police secure are regularly away from the public. The issue was managed by Supreme Court in instances of *Munshi Singh Gautam and Others v. state of Madhya Pradesh*⁴⁰⁷ the Apex Court noticed; "Seldom in instances of police torture or custodial demise, is immediate visual proof accessible of the complicity of the police staff, who alone can make sense of the conditions in which an individual in their authority had passed on. Bound as they are by the obligations of fraternity. It isn't perceived that police representatives decide to stay silent and as a rule even smother reality to protect their partners." The Supreme Court took reference of the 135th Report of Law Commission has suggested that a Section 114(B) ought to be embedded in the Indian Evidence Act, 1872, to present a rebuttable presumption that wounds supported by an individual in police guardianship might be attempted to have been brought about by the police. Such a proviso perhaps would affect officials partaking in torture in police care. The Supreme Court expressed, "Suitable such changes in the regulation not exclusively to lessen custodial offenses yet in addition to guarantee that such violations don't go unpunished. Further, the Court expressed that courts are likewise important to have a change in their vision, technique, understanding and demeanour, particularly in examples including custodial wrongdoing and they ought to exhibit more noteworthy responsiveness and embrace a reasonable as opposed to a restricted specialized approach. Custodial Jurisprudence" including torture to arrestee encroachment of basic freedoms, resident qualified for get pay from State, quantum of pay would rely upon

⁴⁰⁶ *Bhagwan Singh v. Province of Punjab*, AIR 1992 3 SCC 249.

⁴⁰⁷ *Munshi Singh Gautam and Others v. State of Madhya Pradesh*, AIR 2005 SCC 631.

curious truth of each case and discipline under Section 330 of Penal Code⁴⁰⁸ is deficient to fix some unacceptable done to resident. The Supreme Court of India regretted on the limitation of police force of arrest and given directions in arresting and detaining by police and regulation authorization organizations in the country. They likewise have the power of regulation Article 141 of the Constitution gives that the law broadcasted by the Supreme Court is required on all courts in India. Article 141 of the Constitution⁴⁰⁹ expresses that the law pronounced by the Supreme Court is restricting on all courts in India. An authority who wilfully or erroneously disregarded Supreme Court bearings might be charged in court under material articles of the Indian Penal Code or potentially under the Contempt of Courts Act, 1971.

IV. HOW EFFECTIVE HAS JUDICIARY BEEN TO DEAL WITH CASES OF CUSTODIAL DEATHS AND POLICE BRUTALITY?

The Hon'ble Supreme Court has kept individual respect as a point of convergence in plenty of Judgments and has generally been exceptionally delicate to the issues of police brutalities. In *Prakash Kadam Vs Ramprasad Vishwanath Gupta*⁴¹⁰, the Supreme Court saw that: Police officers are people who should maintain the law. As we would like to think, assuming wrongdoings are perpetrated by standard individuals, common discipline ought to be given, yet in the event that the offense is carried out by police officers, a lot more extreme discipline ought to be given to them since they do a demonstration absolutely in opposition to their obligations. Social media following the incident, #JusticeForJayarajAndBennix began moving. Practically every one of the major political heads of the nation tweeted requesting a finish to this type of police mercilessness and extreme discipline for the wrongdoers in khaki. Film stars,

significant superstars and cricketers too noticeably voiced their anxiety via virtual entertainment. There is likewise enormous shock that the polices accepted to be answerable for the passings are not being accused of homicide and have been only moved or suspended.

The Supreme Court has throughout the long term, made sense of and expounded the extent of Fundamental Rights. They have firmly gone against interruptions upon them by specialists of the State, by declaring that the privileges and respect of people should continuously be maintained. The Court has set out specific mandates for policing.

These mandates manage different parts of police work at the station house or state of the art level, like enlistment of a case; lead of an examination; completing of a arrest; treatment of a arrested individual; award of bail; addressing of a suspect; and assurance of the freedoms of ladies, poor and the distraught. They likewise have the power of law. An official who wilfully or accidentally overlooks Supreme Court mandates can be investigated in court under important arrangements of the Indian Penal Code and under the Contempt of Courts Act, 1971.

V. JUDICIAL MECHANISMS SAFEGUARDING THE CRIME AGAINST CUSTODIAL DEATH AND POLICE BRUTALITY

A. AGAINST CUSTODIAL TORTURE: - Protected SAFEGUARDS

It has been held in a catena of decisions that in light of the fact that an individual is in police authority or kept or in custody, doesn't deny of him of his essential thing privileges and its infringement enables the individual to move the Supreme Court under Article 32 of the Constitution⁴¹¹, Article 20 of the Constitution⁴¹². Article 20 fundamentally⁴¹³ gives an individual

⁴⁰⁸ Indian Penal Code, 1860 § 330.

⁴⁰⁹ INDIAN CONST. art 141.

⁴¹⁰ *Prakash Kadam v. Ramprasad Vishwanath Gupta*, (2011) 6 SCC 189.

⁴¹¹ INDIAN CONST. art 32.

⁴¹² INDIAN CONST. art 20.

⁴¹³ INDIAN CONST. art 20.

the privileges against conviction of offenses. These incorporate the rule of non-retroactivity of corrective regulations (Nullum crimen sine lege) 'No wrongdoing, no discipline without a past correctional regulation', Article 22 of the Rome Statute of the International Criminal Court for example ex-post facto regulations along these lines making it an infringement of the people major freedoms assuming endeavours are made to convict him and torture him according to some rule. Article 20 additionally safeguards against twofold risk (Nemo Debet Pro Eadem Causa Bis Vexari) No one should be two times disturbed or badgering if it appears to the court that it is for oneself and a similar reason, these show protection for an individual. The police subject an individual to merciless and ceaseless torture to cause him to admit to a wrongdoing regardless of whether he has not perpetrated something very similar.

Article 21 of the Constitution of India: This article has been perceived in the Indian legal executive to safeguard the option to be liberated from torture. This view is held on the grounds that the right to life is in excess of a basic right to carry on with a carnal presence. The saying "life or individual freedom" in Article 21 incorporates an assurance against torture and attack even⁴¹⁴ by the State and functionaries to an individual is taken in authority and no sovereign invulnerability can be argued against the responsibility of the State emerging because of such crook utilization of power over the hostage individual.⁴¹⁵

Article 22 of the Constitution of India: Article 22 furnishes four essential thing freedoms concerning conviction. These incorporate being educated regarding the grounds of arrested, to be guarded by a legitimate professional of his decision, preventive detainment regulations and producing before the closest Magistrate in somewhere around 24 hours of arrest of the individual. Consequently, these arrangements

are intended to guarantee that an individual isn't exposed to any evil treatment that is without legal support or outperforms recommended overabundances⁴¹⁶.

B. Other Statutory Safeguards:

Code of Criminal Procedure, 1973: Sec. 46 and 49 of the Code defends those under guardianship from torture who are not blamed for an offense culpable with death or detainment forever and furthermore during escape. Sec. 50-56 are in consonance with Article 22. Sec. 54 of the Code is an arrangement that to a huge degree compares to any punishment of custodial torture and viciousness. As per it, when a charge of abuse is made by an individual in authority, the Magistrate is without even a second's pause expected to inspect his body and will put on record the aftereffect of his assessment and reasons in this way It gives them the option to bring to the Court's notification any torture or attack they might have been exposed to and have themselves analyzed by a expert on their own solicitation A compensatory component has likewise been utilized by courts. At the point when the Magistrate doesn't follow methodology concerning engaging objection of custodial torture, it calls for impedance by the High Court under S.482 of the Code. One more critical arrangement concerning custodial torture prompting passings is Sec. 176 of the Code where a mandatory authoritative request is to happen on death of a charged caused in police guardianship. Sections 167 and 309 of the Code have the object of bringing the charged people under the watchful eye of the court thus defend their privileges and interests as the detainment is under their authorisation.

Indian Police Act: Section 7 and 29 of the Act accommodate excusal, punishment or suspension of police who are careless in the release of their obligations to play out something similar. This should be visible in the

⁴¹⁴ INDIAN CONST. art 21.

⁴¹⁵ D.K. Basu v. State of West Bengal, AIR 1997 SC 610.

⁴¹⁶ INDIAN CONST. art 22.

illumination of the polices abusing different sacred and legal protections alongside rules given

Indian Penal Code (IPC), 1860: After the questionable Mathura Rape case⁴¹⁷, an alteration was achieved in Sec. 376 of the IPC. Sec. 376(1)(b) punishes custodial assault submitted by polices. This was a much-needed development made to the section being referred to as it at long last censures the demonstrations of police who exploit their power. Sections 330, 331, 342 and 348 of the IPC have apparently been intended to discourage a police, who is engaged to arrest an individual and to cross examine him during examination of an offense from falling back on third degree techniques causing 'torture'.

VI. ROLES AND FUNCTIONS OF NATIONAL HUMAN RIGHTS COMMISSION

One of the essential capacities that the NHRC needs to perform is to get objections and start examinations concerning infringement of basic liberties by community workers. Maltreatments of police power and common freedoms infringement include more than 60% of the protests made to the NHRC consistently. In 2007, 76,444 cases were enlisted with the Commission for thought. Both state legislatures and executives are expected by the NHRC to ask District Magistrates and Police Superintendents to report any custodial passing or assault to the NHRC in somewhere around 24 hours of its event. They can either demand proof about any wrongdoing, send their own examination groups to research a case, or enroll the assistance of other insightful organizations. Between 1 April 2007 and 31 December 2007, a sum of 1,459 instances of custodial passings were accounted for to the NHRC by the state legislatures and association domains.⁴¹⁸

The National Human Rights Commission (NHRC) has given a bunch of rules for prison regulation state specialist obligation. Worried over the absence of satisfactory post mortems performed to research reasons for death in police and legal detainment, for instance, the Commission has requested videotapings and more precise posthumous records. By and large, where a casualty's family gets cash for a passing brought about by an individual from the police division, they have requested the states to take a piece from the pay from the individual who caused the demise.⁴¹⁹ The NHRC has regularly voiced its disappointment with police powers' proceeding with contribution in torture, extrajudicial killings, and constrained vanishings, in any event, venturing to such an extreme as to say that extrajudicial killings have been right around a piece of State strategy.

For the Commission, the protection and promotion of human rights means protecting democracy itself, a democracy that is inclusive in character and caring in respect of its citizens. The Commission has never hesitated in drawing the attention of the State and its agencies to those acts of commission, omission, abetment or negligence which result or may result in violation of human rights. In approaching diverse human rights concerns, including vexed issues such as the protection of human rights in the face of terrorism, the Commission has always been guided by the principles laid down in the Constitution which, in its Preamble, has inter alia propounded two core values that must always be protected and advanced: the life, liberty and dignity of the individual, and the unity and integrity of the nation. There is, in fact, no incompatibility between the two; instead, they reinforce each other. A strong nation requires, as a sine qua non, the strong protection of human rights of its citizens. To act otherwise, is to injure both. In fact, if the social, political and economic strength of the nation is

⁴¹⁷ Tukaram and others v. State of Maharashtra, AIR 1979 SC 185.

⁴¹⁸ NHRC, *Some important interventions of NHRC*, NATIONAL HUMAN RIGHTS COMMISSION, INDIA, (April. 05, 2022, 11:57 AM), <https://nhrc.nic.in/press-release/some-important-interventions-nhrc>

⁴¹⁹ NHRC, *NHRC issues fresh guidelines regarding intimation of Custodial Death*, NATIONAL HUMAN RIGHTS COMMISSION, INDIA, (April. 05, 2022, 12:47 PM), <https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death>

to be assured and its unity and peace is to be guaranteed, it is essential to ensure the protection of human rights including dignity of all especially those who are vulnerable and marginalized.⁴²⁰ This is a precondition for good governance. Protection of human rights and good governance are two sides of the same coin. This is the prime reason that has propelled the Commission to give focused attention to economic, social and cultural rights, especially of vulnerable sections, namely, women, children, Scheduled Castes, Scheduled Tribes, minorities, disabled and those living in penury, including displaced persons.

VII. HOW EFFECTIVE ARE NHRC?

Protection of Human Rights Act, 1993 was ordered⁴²¹, which empowered the foundation of the National Human Rights Commission in Delhi and 14 state human rights commissions around the country. The Act sets down a wide command for common freedoms commissions, which incorporates: investigations into occasions of human freedoms infringement by community workers; research; supporting endeavors to increment mindfulness about basic freedoms; and examining police lock-ups, penitentiaries and adolescent homes where individuals are buried. While basic liberties commissions have contributed enormously to basic freedoms in India, it is easily proven wrong whether they can as of now accomplish more, thinking about the primary and functional restrictions that are confronted.

There has been creating stress in the country and abroad about issues interfacing with essential opportunities. The Parliament laid out the protection of essential opportunities Act, 1993. As demonstrated by Section 2(d) of the Protection of Human Right Act⁴²², 1993, "Human Rights" connotes "Rights interfacing with Life,

Liberty and Dignity of an Individual guaranteed by the Constitution and encapsulated in International Covenant endorsable by court in India. The Act gives the constitution of a National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better affirmation of normal freedoms of inhabitants in the country. Despite the fact that individuals in society are concerned about custodial death, no progress has been made. Despite the fact that data analysis of literacy from prior records shows that the rate of literacy has increased and that individuals are now more aware of their rights and responsibilities, Still, a big portion of society is oblivious, and they are unable to comprehend that there are still people who are unaware and also police officers are subject to constraints that they are not authorised to exceed, and if they do, it will be considered a violation of the law.⁴²³

The National Human Rights Commission, since its start, has been settling the issue of custodial violence including torture, attack, destruction and disappearing in police care. On 14 December 1993, the Commission gave of its rules to the All-Chief Secretaries of the large number of States, mentioning that they direct all District Magistrates and Superintendents of Police to report clearly to the Commission any illustration of death or attack in police authority inside 24 hours of its occasion, failure to send such reports, it was explained, would lead to a presumption by the Commission that the work was made to cover current real factors. It isn't enough for the Commission to answer control the torture, the Commission is of the view that the recommendations of the Indian Law Commission (ILC) made in its 113th Report of 29th July 1985 on a reference by the Supreme Court of India⁴²⁴, should be circled back to. In that proposition, the ILC suggested the expansion of a portion 114 (b) in the Indian

⁴²⁰ Gupta, Vinod Prakash. "Role of civil society and human rights." THE INDIAN JOURNAL OF POLITICAL SCIENCE, 2, 363-75 (2011).

⁴²¹ NATIONAL HUMAN RIGHTS COMMISSION, INDIA, (April. 7, 2022, 07:32 AM), <http://ncwapps.nic.in/acts/TheProtectionofHumanRightsAct1993.pdf>.

⁴²² Human rights Act, 1998 § 2(1)(d).

⁴²³ Pracheen Raj, *custodial death critical analysis*, ELEMENTARY EDUCATION ONLINE, 20, 1860-1867 (2021).

⁴²⁴ LAW COMMISSION OF INDIA, *Report 273*, (April. 3, 2022, 4:46 PM), <https://lawcommissionofindia.nic.in/reports/Report273.pdf>

Evidence Act, 1872, to introduce a rebuttable supposition that injuries upheld by a person in the police guardianship may be considered having been achieved by a police. In the viewpoint on this commission, such a course of action could well limitingly affect of partaking in torture. Further, this commission maintains the proposition of the Indian Law Commission that Section 197 of the CrPC⁴²⁵ be changed to abriate the need of regulatory approval for the incrimination of a police where a prima face case has been spread out, in an enquiry drove by a gathering judge, of the Commission of a custodial offense, this Commission furthermore upholds the viewpoint on the National Police Commission in its first Report⁴²⁶ of February 1979, that ought to be a mandatory enquiry, by a gathering judge for every circumstance of custodial passing attack or deplorable hurt.

In endeavor to ensure giving insights about custodial passing is exact and advantageous, the NHRC had recommended to the States and Union Territories that the last accounts film of after death evaluation a send the tapes to the Commission, in order to hinder controlled Post-mortem report helps those at risk for certifiable encroachment of essential freedoms. Isolated this, the Commission moved further and endorsed to the Government of India that advancement to UN Convention⁴²⁷ against Torture and Other savage fierce or Degrading Treatment or Punishment, 1984. At the evacuation of custodial brutality cases, the commission by proposing enlistment of criminal contentions against rebellious authorities and portion of compensation to individuals being referred to or nearest relative. Since on bigger piece of complaints got by the National Human Rights Commission concern the police.

VIII. NHRC AND ITS LIMITATIONS

NHRC can't make any move against infringement of Human privileges by private gatherings. The Recommendations made by the NHRC are not restricting. NHRC can't punish the specialists that don't carry out its suggested orders. The NHRC has restricted locale over cases connected with military The NHRC can't hold ward in the accompanying cases:

- Cases more established than one year.
- Cases that are mysterious, pseudonymous, or dubious.
- Silly cases.
- Cases relating to support matters.

Human Rights Commission has been made critical commitments to fundamental capacities furthermore, significant obligations to safeguard the common freedoms at Nationwide. It has gotten the protests and makes the essential move towards the objections connected with basic freedoms infringement at the public level. It's would be an endeavor to bringing a common liberties approach and significant obligations to regulative processes, imaginative arrangement making and projects carried out inside the nation level as well as the state. Its contribute the significant job in security and advancement of basic freedoms in India, as well as concerned state, have vanished detached the expected job of examining claimed infringement, analyzing the public requests, practicing assess the ward, in the event that there is any need for giving heading and help to legislatures, making mindfulness about basic freedoms training among the officials, academicians, partners, and understudies as well as general society, worried that advancing the communication between the general population and different partners, worked on the connection among states and global common liberties associations and distributing yearly reports, bits of writing, magazines and periodical audits.

⁴²⁵ Code of Criminal Procedure, 1973, § 197.

⁴²⁶ LAW COMMISSION OF INDIA, *Report 273*, (April. 3, 2022, 4:47 PM), <https://lawcommissionofindia.nic.in/reports/Report273.pdf>

⁴²⁷ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, (April. 3, 2022, 05:12 PM), <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cat.pdf>

The National Human Rights Commission (NHRC) isn't permitted to explore charges of denials of basic freedoms by individuals from the military, which incorporate the military, naval force, and flying corps, as well as various government equipped police powers, like the Border Security Force (BSF). This restriction on its order makes it hard to explore suspected wrongdoings in alleged "upset" areas where these powers are sent. The NHRC's situation experiencing the same thing is restricted to making suggestions to the Central Government. As indicated by the report⁴²⁸ of the Asian Center for Human Rights "Torture in India 2011", The National Common Liberties Commission recorded a sum of 14,231 cases in authority in India during 2001 and 2010, which incorporates around 1,504 passings in police care and around 12,727 cases in legal authority⁴²⁹. This report sees that these are just the cases answered to the NHRC, and do exclude every one of the instances of custodial passings. The report ascribes the passings in authority to torture, disavowal of clinical offices and brutal jail conditions. When an individual was arrested, the obligation regarding his/her life, wellbeing and security rest with the experts in whose guardianship the person is, be it the police or the prison specialists.⁴³⁰

While researching charges of custodial torture or passing, the NHRC frequently depends on the investigatory powers of the very power it is itself examining. This prompts what is happening in which in its discoveries are limited to those made by the very police compel it is looking to research. Another huge shortcoming is the Commission's absence of capacity to execute its decisions. At the point when the NHRC and SHRC direct examinations concerning basic liberties infringement, their powers are restricted to mentioning that the public authority make a move against the suspect or give help to the person in question. Assuming a

state government won't acknowledge the proposals of the Commission, there is no arrangement in the law that engages it to drive the Government to execute its suggestions. The NHRC has had little progress in keeping the State and its representatives liable for demonstrations of torture, extrajudicial killings, and constrained vanishings in India because of its restricted transmit, recommendatory job, and absence of autonomous analytical powers.

Additionally, as a feature of one of the most definite requests the NHRC was requested to do by the Supreme Court during the 1980s and '90s during the Punjab emergencies, there were reports of mass incinerations submitted by the police, which also were totally unwarranted. This fair was an absolute necessity if the public authority had any desire to show an example of past infractions and the legal time limit was not a snag. Since going through a progression of steps that closed in 2013, the NHRC gave monetary guide to right around 1500 individuals. To permit the Commission to mention a criticism even after the time of restrictions has lapsed on the off chance that they are sure the postponement was in acting in light of a legitimate concern for equity.

IX. INVESTIGATIONS GUIDELINES BY NHRC

Any wrongdoing is frequently explored by the police as per the NHRC's regulations, and it regularly fills in as a springboard for a subsequent examination by the State's Criminal Justice Department or on the other hand, if important, the Central Bureau of Investigation. It has enhanced these with examinations directed by its own Investigative Division where suitable. The NHRC Investigating officials observed numerous inconsistencies in the police report. From the scrutiny of accessible reports, including the recorded assertions and the assessment of the clinical master on the NHRC board, the episode of rape was, prime-facie, laid out. During the enquiry, the NHRC group tracked down no debate or animosity between the casualty's family and the supposed

⁴²⁸ ASIAN CENTRE FOR HUMAN RIGHTS, *Torture 2011*, (April. 5, 2022, 09:02 AM), <http://www.achrweb.org/reports/india/torture2011.pdf>

⁴²⁹ ASIAN CENTRE FOR HUMAN RIGHTS, *Torture 2011*, (April. 5, 2022, 10:12 AM), <http://www.uncat.org/wp-content/uploads/2019/05/torture2011.pdf>

⁴³⁰ Sugas et al, 2013, pp.121-124.

charged, as asserted by the District Police. The police made procedural breaches during the examination of the case to debilitate it. The person in question and her relatives had not left the town under any tension. They had left for Delhi at the appointed time as they had been dwelling there for the last 5-6 years. Police had given security to the casualty after the occurrence⁴³¹, so clearly, the whereabouts of the casualty were known to them. Subsequently, the police report was viewed as ridiculous and misdirecting adding up to forswearing of equity to the person in question.

The NHRC concurs that these requests have brought about the conviction of polices in a couple of cases, yet that this is inconceivable because of the variables he refers to, including an absence of documentation. The NHRC contends that when a government employee is blamed for being complicit in an extrajudicial killing, the state has two obligations: rebuffing the suspects and change to the casualties' families. Inferable from the trouble in observing the charged and making a decision about their obligation, the NHRC can ensure that the State gives the help that the NHRC suggests for the casualties' families in most of cases.

In the event of a death in custody or during police action, the following rules should be followed when performing the magisterial enquiry:

- The magisterial inquiry should be carried out as soon as possible.
- The investigating magistrate should travel to the scene of the incident to become acquainted with the facts on the ground.
- The inquiry magistrate should make certain that the information reaches all parties involved, including the victim's close family.
- The magisterial investigation should look at things like the circumstances of death, the

cause of death, the method and sequence of events that led to death, and so on.

- Inquest reports, post mortem reports, the ultimate cause of death, medical treatment records, and other data should be examined and verified by the inquiry magistrate.
- The magistrate should question the deceased's family members and other relatives, as well as eyewitnesses, prison authorities, and co-inmates.⁴³²

X. **HARASSMENT BY THE POLICE DEPARTMENTS AND ILLEGAL DETENTION, TORTURE ETC.**

The intentions of the police is to keep the public safe. While it is their obligation to implement the constitution, this doesn't give them the position to act unlawfully. They should likewise comply with government regulations to allow individuals those honors. Police savagery is frequently blamed for officials who disregard the guidelines and misuse their position. The reality that such a police force does not exist in India, as evidenced by conclusions of numerous commissions and committees, complaints received by human rights commissions, stories recorded in the news, and experiences of ordinary citizens on the street. The need for police reform is both obvious and pressing. Reforms in the police force must be conducted in two directions at the same time. One is to create statutory institutional mechanisms to guarantee that state governments' authority of supervision over their police forces ensures that police performance is in strict compliance with the law. To put it another way, the police are responsible for establishing and maintaining the rule of law, not the rule of politics. This departure from past and current practises would need isolating them from illicit outside control and influence while still

⁴³¹ BUREAU OF POLICE RESEARCH AND DEVELOPMENT, (April 10, 2022, 09:06 AM), <https://bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>

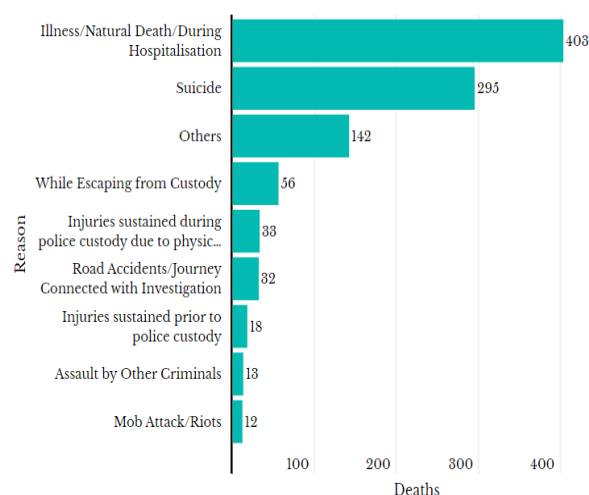
⁴³² NHRC, *Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action*, NATIONAL HUMAN RIGHTS COMMISSION, INDIA (April 1, 2022, 04:05 PM), https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf

granting them functional autonomy. Once the police have functional independence, they may be held accountable for their actions. Existing accountability measures must be enhanced and improved. In addition, new procedures must be formed that act independently to monitor police operations and investigate citizen complaints against the police. The alternative is to make every effort to strengthen and improve policing within the existing system and structure. In addition to improving recruiting, training, and leadership standards, lower-level police officers' working and housing circumstances must be vastly improved—a process that should begin with elevating the constabulary's stature. On May 9, 2001, the Commission reaffirmed S.18 (3) of the Protection of Human Rights Acts⁴³³ fundamental definition and goal. The object of S.18 (3) of the Act⁴³⁴ is to give moment transitory help in situations where an unmistakable by all appearances instance of Human Rights misuse has been recognized, so the petitioner doesn't need to sit tight for the most extreme measure of pay awardable to be chosen in another procedure or for the character of the important community worker guillotined. The constitution gives specific least procedural guidelines that should be consented to as indicated by the legitimate technique. Article 22 lays out procedural formalities against arrested or detained. This article gives freedoms to all people, whether residents or non-residents. The fundamental point is to make these arrangements usable just on account of a lawbreaker or semi criminal offense. Subsequently, arrests submitted in common cases will be avoided. Article 22 ensured the accompanying insusceptibility from arrested or detained: the option to be educated at the earliest

opportunity of the purposes behind the arrest or confinement.

- The option to contact and have a portrayal by a legal advisor that he would need.
- The option to be delivered before a legal official in somewhere around 24 hours of getting arrested.
- The right to not to be kept in the prison for a period over 24 hours without the request for a legal official.

Reasons for Death of Persons in Police Custody between the years 2010-19.



Source: Available at <https://ncrb.gov.in/en/crime-india>

XI. DECIDED CASES BY THE SUPREME COURT

In the case of *Neelbati Behra v. State of Orissa*⁴³⁵, the Supreme Court observed and ordered as follows:

- a) The commission has taken a clear position that the State's duty to ensure the protection of persons in its custody is strict and absolute, with no exceptions. When a citizen is in the custody of the state, the inalienable Right to Life of all citizens, including convicts, inmates, and those on

⁴³³ Human rights Act, 1998 § 18(3).

⁴³⁴ Human rights Act, 1998 § 18(3).

⁴³⁵ *Neelbati Behra v. State of Orissa*, 1993 SCC 746.

trial, cannot be taken away unless the process specified by statute is followed.

b) It is now settled law that if the state fails to take all reasonable precautions to protect citizens' lives while in its care, the state is held vicariously responsible for its actions or omissions.

c) The "immediate temporary relief" contemplated by section 18(3) of the Act must be linked to the damage or loss sustained by the victim or members of his family as a result of a breach of Human Rights by public servants.

In *Shyamsunder Trivedi v. State of MP*⁴³⁶, the Supreme Court correctly recognised that in the absence of concrete proof, indicting responsible police officers becomes extremely difficult. Because all police officers would want to safeguard their colleagues, the Court reiterated that the introduction of Section 114-B into the Indian Evidence Act 1872 is needed. This would ensure that if an injury occurred while the individual was in custody, the court would conclude the police officer in charge was to blame. As a result, the burden of evidence is reversed. The Legislation Commission made this suggestion not once, but twice (in its 113th and 152nd reports), yet it has yet to become law, despite the fact that the bill was presented in 2017. The Hon'ble Supreme Court, in the matter of *Saheli v. Commissioner of Police*⁴³⁷, ordered the Delhi Administration to pay Rs. 75,000/- as exemplary compensation to the mother of a 9-year-old boy who died as a result of a police officer's beating."

XII. CONCLUSION AND SUGGESTIONS:

It is not always the case that the ends justify the methods. In certain instances, police officers have a legal obligation as well as a lawful right to arrest and question a criminal throughout the course of an investigation. However, this interrogation/investigation must be legal in

nature. In the guise of investigation, police cannot subject an accused individual to abuse, humiliation, or torture. Only in movies do the benefits of "third degree" approaches become apparent. Such activities cannot be tolerated in a welfare state. Human dignity is affronted by incarceration brutality. It tarnishes the country's reputation as a civilised one. To stop the disease from destroying the criminal justice. In the last decade, the number of custodial deaths and violence has increased significantly, even as courts have imposed compensation and held the state liable for several acts committed by police or other employees, and in *Moheela Moran*⁴³⁸ and *Phoolwati v. NCT of Delhi*⁴³⁹ and few other cases of custodial deaths, the court has upheld the vicarious liability doctrine's applicability. India is in a situation of relativity, and it is attempting to develop fresh and faultless legal principles. It's producing a legal admixture, a hybrid concept that's complete in every way. This statute harmonises the essence of constitutional law with the tort law, assisting in the strengthening of the inherent sense of natural justice represented in our expanding legal complex. All law enforcement officers Officials must answer to an independent judicial and legislative body authority in charge of discipline This must be accompanied by a independent and internal oversight, as well as Mechanisms for filing complaints that make regular visits to places of business detention. These systems and procedures might be ineffective at times look onerous, and may obstruct law enforcement efforts in completing their challenging but critical responsibilities. It reveals the callous attitudes of those participating in torture, which is a crucial kind of accountability in and of itself. Embarrassment is a classic technique for preventing or deterring human rights breaches. States do not want to be associated with negative human rights findings. It is therefore humiliating for a country to be labelled a torturer. It is difficult to accept that the individual, who has assumed the

⁴³⁶ *Shyamsunder Trivedi v. State of MP*, (1995) 4 SCC 262.

⁴³⁷ *Saheli v. Commissioner of Police*, AIR 1990 SC 513.

⁴³⁸ *Moheela Moran v. State of Assam*, (2000) 2 Gau LT 504.

⁴³⁹ *Phoolwati v. NCT of Delhi*, 2000 Cr Lj 1613.

liability of our security and government assistance, has deceived us; the individual whom we trust for help and assurance has turned to torture on the suspects/detainees, which are not yet demonstrated blameworthy. When a person's liberty is taken away, the state has entire responsibility for upholding their human rights. The right to life is the most basic of these. Facilities might be a significant source of aggravation. In such circumstances, cooperation between jail officials and inmates may be possible. Infection spreads much further among the convicts. The way that the different torture techniques utilized by the police incorporate assault, hitting in the private part, peeing in mouth, constrained oral sex etc. is really unsettling and essentially communicating the gravity of this issue. It brings up a vital issue that why police need regard for the human individual, such treachery by the police features the lacunas of the Indian legal system. In this way, accentuating the critical need of an enemy of torture regulation in India is significant. Envision about that coordinated society, where there would be expected consistence of 'law and order' and where the 'legitimate equity system' would show up for everybody. In such a situation everybody will get equity; rich individuals will not have the option to smother poor and oppressed segments of society, the specialists having influence won't abuse their influence, nobody will actually want and everybody will actually want to partake in the 'Right to life'⁴⁴⁰ in evident sense. Such a situation looks captivating. It must be annihilated with due responsibility and diligence, as without them such a mammoth errand can't be accomplished. Some of the suggestions are:

- *Convicts are reparable people:* Convicts are reparable in the event that they are furnished with a legitimate opportunity to change themselves. Incurring torture for them during the phase of transformation can deny them of the extent of progress and

can exacerbate them for the general public. It's fundamental that society and police ought to be thoughtful on them as everybody merits another opportunity, to correct the previous misstep. Thus, it becomes vital to comprehend that our generosity can change them to turn into a decent human, while the torture can aggravate them than a creature.

- *Need for significantly impact in the minds of society:* One reason for the deferral in the institution of 'against torture regulation' is that everybody is spiralled in the outlook that assuming somebody has perpetrated a horrendous wrongdoing than he should be tortured, yet this comes in opposition to the substance of regulations in our country which advocates for the lofty right to live with dignity. Ideas can be many, but the investigated utilization of them is required. The general public believes police to be the rescuer of the human, so does the law. The police office should try to understand its significance in a civilised society. They need to regard the basic freedoms and the utilization of those privileges, independent of who the individual is. The power accompanies liability, along these lines, the police office needs to grasp their part to be responsible for safeguarding the personality of peace and lawfulness in the country.
- *Ratify UN Convention on Torture (1984):* Acknowledge the challenge to visit India from the Special Rapporteur and bring the Optional Protocol's statements into Indian regulation. Battling, common agitation, or a public crisis are not excluded from the restriction on torture and some other awful, coldhearted, or corrupting discipline or viciousness. India comes up short on reasonable homegrown enemy of torture regulation, despite the Supreme Court's endeavors to boycott torture in police guardianship. India is one of nine nations that have marked yet not yet confirmed the United Nations Convention Against Torture

⁴⁴⁰ INDIAN CONST. art. 21.

of 1984⁴⁴¹, alongside Sudan and the Democratic Republic of the Congo (CAT). The Indian government still can't seem to pass regulation that incorporates the CAT's conditions, in spite of marking the Convention in 1997.

- *Need for India's police force to be revamped on a high scale:* The new Indian state is the result of a battle that meant to make a nation liberated from provincial rule and a peaceful life for all Indians. India retained British frontier political, police, and legal executive constructions subsequent to presenting another constitution. Today, crime is dealt with by the Indian Police Force of 1861 and the Indian Penal Code of 1860. The Indian government has recognized the requirement for provincial police powers to be modernized. Nonetheless, it is yet to carry out the changes that the National Police Commission and others have proposed. The Indian Police Force needs a total upgrade by the public authority. Dissimilar to the police powers in numerous other popularity-based nations, which are portrayed as "local area serving," India's post-freedom police force is as yet a police "force." The Indian police force is overwhelmed by the pioneer attitude of regarding individuals as subjects to be controlled instead of people to be served.
- *Adequate police officer education and training:* It is critical to offer 'proper education' to police personnel regarding the human rights of the prisoner or person in custody. It's also critical to provide them adequate training in terms of how to behave around suspects or detainees, as well as how to handle suspects or detainees throughout an investigation or inquiry. Respect for "the human being" and "human rights" may be instilled in police personnel by properly teaching and training them. As a result, when our messiah possesses these attributes as well as 'common politeness,'

the problem of incarceration death will no longer exist in society.

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