



# A REVIEW OF D.K. BASU VS STATE OF WEST BENGAL ABOUT CUSTODIAL DEATHS

<sup>1</sup>Advait Aniruddha Kulkarni  
<sup>1</sup>LLM (INTERNATIONAL LAW)  
<sup>1</sup>GITAM-Deemed to be University

**Abstract:** In this article, the author reviews the various reasons and causes of custodial fatalities and legal position in India concerning the landmark judgment in the case of D.K. Basu v. State of West Bengal. Deaths in the hands of police authorities are a significant source of worry. Custodial deaths are an assault on an individual's body and an assault on human dignity, causing mental annoyance or suffering in the victims' minds behind the four walls of jails.

In this article, the Causes and perspectives of custodial deaths have been discussed, and constitutional and human rights perspectives have been considered. Also, the legal positions under IPC, CRPC, and evidence acts must be implemented to handle the problem of custodial deaths in police lockups, whether unnatural or natural deaths, and this case gives the guidelines are analyzed.

**Key terms:** custodial Fatalities, police custody, IPC, CRPC, natural death, unnatural death, Guidelines.

## Introduction

Acts against public policy and the peace in society are constantly discouraged by the norms and restrictions imposed by the law. Taking the offender into prison and applying punishment is an effective strategy to reduce crime rates in society. Custody is described as restricting an individual's freedom of movement in its broadest meaning. However, it has been seen that the death and brutality of an accused individual in police custody have increased significantly in recent years. Many people have died in police custody, but the administration has paid little attention. Deaths in Custody are unacceptably common in a democratic democracy like India, where every person has a viewpoint. The freedom to life and liberty is guaranteed under Article 21 of the Indian Constitution. Likewise, the accused is entitled to a fair and reasonable inquiry under criminal law's fundamental principles. It is also the state's vicarious responsibility in cases of custodial fatalities, and it is the state's responsibility to rehabilitate the victim and offer proper compensation.

"The chairman and chief executive of Legal Aid Services, a recognized non-political organization, filed a letter to the Chief Justice of India citing the deaths that happened in police custody and lock-ups, according to the case of D.K Basu vs. State of West Bengal. It was also recommended that the subject be taken seriously and that "custody jurisprudence" be established. It was also said that police officials make different initiatives to polish over problems of in-custody deaths and that as a result, the violation goes unpunished. The letter was treated as a "writ petition," and notice was sent to respondents because of multiple facets and gravity of the highlighted matter."

In the present situation, deaths that happened while in the hands of police authorities are a significant source of worry. It is much more frustrating when it has done by society's defenders. The police officers' behavior violates fundamental human rights and the rule of law. It is generally performed when the victim is in police custody, where he cannot defend himself and is completely helpless. Custodial deaths are an assault on an individual's body and an assault on human dignity, causing mental torment or suffering in the victims' minds behind the four walls of jails.

### **Deaths in custody: causes and perspectives**

According to the Asian Centre for Human Rights (ACHR)<sup>1</sup>, a total of 1,674 custodial fatalities occurred in India, with 1,530 deaths occurring in judicial custody and 144 deaths occurring in police custody. The alarming rise in incarceration-related mortality is a significant source of worry in society.

*Custodial death* is defined as the death of a person police have arrested on suspicion of committing a crime or awaiting trial. The state of Uttar Pradesh has the worst record, with the most significant number of deaths in police custody. The police have been granted the legal power to use good governance to ensure information from dangerous criminals. It is undeniable that police officers employ force while questioning suspects. Death in police custody is a "black mark" for the whole department, as officers have no authority to take the law within their hands and kill an accused person. Of the primary cause of incarceration death is that, under the influence of influential individuals and politicians, police officers attempt to get an instant confession from the accused by employing force. If the accused refuses to accept his guilt, they will hire staff. It is also demonstrated that police officers use power against hardened criminals and kill others who have no prior criminal history.

According to a report by the NCRB<sup>2</sup>, Maharashtra has at least 100 cases of injuries and death. Fifty-eight of them were not even in custody and were not brought before the judge. People are slain without the right to justice in a democratic state, which is a significant cause for concern.

It has been noted that "suicide" is among the most commonly stated causes of death in Indian prisons. Suicides in police custody surged by 9% in India in 2018. Andhra Pradesh has the highest number of suicide

<sup>1</sup> <http://www.achrweb.org/>

<sup>2</sup> <https://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>

fatalities, with 27, followed by Maharashtra and Gujarat. In addition, death during treatments and death of the prisoner owing to sickness have been reported as secondary causes of death in prison cases. The attack by police officers in detention is the cause of the accused's death. Road accidents, which include travels related to investigations, fatalities caused when escaping from custody, and injuries incurred, are additional important factors.

## **Constitutional and Human Rights perspective**

The court has correctly said that everyone has the right to seek justice by reasonable and fair measures and that the law must prohibit an accused person from being held in solitary confinement. In addition, there should not be excessive delays in the investigation and trial process.

"The court remarked in the case of *Sunil Batra v. Delhi Administration*<sup>3</sup> that cruel torturing and abuse is against Article 21 of the Constitution of India, which includes the right to live with human dignity," according to the court. "The rights provided by Article 21 are indeed basic, but also human rights."

The Supreme Court ruled in *Khatri v. State of Bihar*<sup>4</sup> that "police officials who inhumanely injured 30 convicts by pouring acid must be punished." Furthermore, the Supreme Court denounced and concluded that the police officers' inhumane torture violated Article 21 of the Indian Constitution." The arrestee's rights are likewise protected by Article 20(3)<sup>5</sup> of the Constitution. A person accused of a crime cannot be forced to testify against himself. Using third-degree torture and tactics to elicit information from the accused is a clear violation of India's Constitution's Article 20 (3).

Human rights are described as inherent rights that all members of society have and without which we would be unable to survive as human beings. India is the world's largest democracy, and it has ratified several international human rights accords. These rights are guaranteed in the Indian Constitution in general. India's determination to uphold its sanctity on a global scale demonstrates its dedication to human rights promotion on both a national and international level.

Extrajudicial killings, sometimes known as 'custodial death,' clearly violate human rights. It is a crime that obliterates an individual's personality and breaks their dignity. Custodial deaths are marked by physical agony, outward body anguish, and mental abuse within the confines of the prison. The level of torture and trauma that a person feels is beyond the reach of the law, whether it be mental anguish or physical infliction of pain. It is a significant issue that is unique to this country and ubiquitous. The UDHR expresses worry over the growing number of Indian cases, stating that Article 5<sup>6</sup> should be preserved.

<sup>3</sup> <https://indiankanoon.org/doc/1515299/>

<sup>4</sup> <https://indiankanoon.org/doc/1122133/>

<sup>5</sup> <https://indiankanoon.org/doc/366712/>

<sup>6</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights/>

## **The legal position in India**

The accused is protected from arbitrary arrest and custodial assault under the Code of Criminal Procedure<sup>7</sup> and the Indian Penal Code<sup>8</sup>. However, new rules under the Code and the Indian Evidence Act<sup>9</sup> must be implemented to handle the problem of custodial deaths in police lockups, whether unnatural or natural deaths. The law panel report also recommended it.

### **Protection under the Code of Criminal Procedure and Indian Penal Code**

The 1973 Code of Criminal Procedure protects people from torture while in custody. There are specific requirements embedded in the CrPC that police officers should keep in mind when controlling an accused or suspected individual. Section 41<sup>10</sup> of the Code grants the authority to arrest anybody. This provision explicitly says that a police officer has the power to control someone to investigate a case further but that they do not have the authority to use excessive force to obtain information from that individual. Furthermore, because the term "may" be included in the section, the power conferred to the police officer is discretionary. As a result, it is his responsibility to make an arrest based on the facts and details of the case.

In the case of *State of Andhra Pradesh v. Venugopal and Or's (1963)*<sup>11</sup>, the court determined that torture in police custody constituted a severe felony and sentenced the defendants to five years in jail.

In the case of *State of Uttar Pradesh v. Ram Sagar Yadav and Or's (1985)*<sup>12</sup>, the court concluded that a person beaten to death in police custody is covered by the Indian Penal Code and can be punished under Section 304<sup>13</sup> of the IPC, overturning the High Court's decision.

The accused shall not be put to more confinement or limitations than are required to prevent his escape, according to Section 49 of the Code. The term 'required' is crucial in this context. The state and police personnel ensure that an accused are not subjected to needless constraints. If a person is apprehended, they must not be subjected to excessive force or torture, and police officers can be held accountable under several parts of the Indian Penal Code if they misuse their authority. Section 340 of the IPC<sup>14</sup> and sections 349 to 358 of the same Code, including assaults and criminal force laws.

The ground of arrest is defined in Section 50<sup>15</sup> of the Code. These reasons for detention must be under Article 22<sup>16</sup> of the Indian Constitution. As a result, non-compliance with the clause will result in an accused's unlawful arrest and imprisonment.

---

<sup>7</sup> <https://legislative.gov.in/sites/default/files/A1974-02.pdf>

<sup>8</sup> <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

<sup>9</sup> <https://legislative.gov.in/sites/default/files/A1872-01.pdf>

<sup>10</sup> <https://indiankanoon.org/doc/1899251/>

<sup>11</sup> <https://indiankanoon.org/doc/867890/>

<sup>12</sup> <https://indiankanoon.org/doc/596213/>

<sup>13</sup> <https://indiankanoon.org/doc/409589/>

<sup>14</sup> <https://devgan.in/ipc/section/340/>

<sup>15</sup> <https://indiankanoon.org/doc/1848903/>

<sup>16</sup> <https://indiankanoon.org/doc/581566/>

In the case of *Joginder Singh v. State of Uttar Pradesh (1994)*<sup>17</sup>, the Supreme Court held that the prospect of exchanging a notice of appearing for the arrest of the accused should be considered. This novel concept relates to the summons, and it can minimize the number of prison offenses in India.

The Code's Section 56<sup>18</sup> and the Constitution's Art. 22<sup>19</sup> provide that a person must be brought in front of a magistrate within 24 hours of being arrested<sup>20</sup>. However, suppose a person is not brought before a judge and is instead held in police custody. In that case, he is subjected to torture and coercion to confess, which results in the revelation of crucial facts. A magistrate must assure and investigate the date and time of the accused's arrest when he is produced before the magistrate to prevent extrajudicial conduct and torture. As a result, the new CrPC provision is proposed for the same.

In addition, several articles of the Indian Penal Code allow for safeguarding the accused while in police custody. Sections 330<sup>21</sup> and 331<sup>22</sup> of the Code protect the accused against undue harassment in detention, as well as extortion of information against his will. In addition, the code states that a police officer can be penalized if he exploits or abuses his authority without cause.

### **Protection under code of Indian Evidence Act, 1872**

The Indian Evidence Act provides further protection to the accused. A confession given to the police is not admissible in court, according to Section 25<sup>23</sup> of the Act. Confession given to the police by a person cannot be used against them unless it is made in front of the magistrate, according to Section 26<sup>24</sup> of the Act.

In addition, Section 164 of the Code mandates that a magistrate record the accused's confessional statement given to him during an inquiry or at any stage of the trial. As a result, the Indian Evidence Act protects the accused from being harassed excessively by the police while in custody.

### **Case analysis: D.K. Basu v. State of West Bengal (AIR 1997 SC 610)**

It is a historic decision by India's Supreme Court in the context of an increasing number of in-custody deaths. The executive chairman of legal aid services sent a letter protesting the rising number of cases of custody fatalities, which the court recognized as a writ petition due to the seriousness of the situation. In this instance, the court found that the statute does not provide an adequate system for dealing with incidents of custodial fatalities in India.

<sup>17</sup> <https://indiankanoon.org/doc/768175/>

<sup>18</sup> <https://indiankanoon.org/doc/1670784/>

<sup>19</sup> <https://indiankanoon.org/doc/581566/>

<sup>20</sup> Torture in Lawful Custody: Violation of United Nations

<sup>21</sup> <https://indiankanoon.org/doc/1357604/>

<sup>22</sup> <https://indiankanoon.org/doc/605427/>

<sup>23</sup> <https://indiankanoon.org/doc/494844/>

<sup>24</sup> <https://indiankanoon.org/doc/387768/>

In its 113th report, the Indian Law Commission recommended that Section 114-B, which dealt with custodial violence, be incorporated into the Indian Evidence Act. According to the court, custodial death is a cause for worry, and it is even worse when a citizen's guardian perpetrates it. As a result, the court ruled that this conduct violates Articles 21 and 22 of the Indian Constitution. It is an apparent violation of the victim's human dignity and fundamental rights. Due to a lack of evidence involving police personnel, it might be challenging to prove their guilt due to the lack of concrete evidence against these policemen. The court also stated that using third-degree tactics by police to get information from the accused is prohibited and should not be employed and that the majesty of the law must prevail. As a result, the police have the right to investigate the case and question the suspects, but they are not permitted to employ third-degree torture to obtain information. The court further stated that the government must implement the suggestions made in the law commission report<sup>25</sup> to stop these crimes against humanity.

### General guidelines

- It is the duty of the police officers not to use third-degree methods while having to investigate and interrogate the accused.
- Attention must be required in checking the working environment, training, and orientation of the police officials with the fundamental human values.
- The legislature must adopt the recommendations suggested by the law commission report by inserting Section 114-B.
- The police should use a balanced approach to extract information from hardened criminals.
- There must be a memo made by the police officer in charge at the time of arrest, and at least one family member of the accused must be present when the arrest is made.
- The requirements under the Constitution under Art. 21 and 22(1) must be followed by police officers.
- Awareness must be created for the arrestee to understand his fundamental rights at the time of the arrest.
- Also, the court has given specific preventive measures that the police officer must follow in charge of arresting an accused.

As a result, this case was a watershed moment in the court's consideration of the country's prevalent issue of incarcerated death and violence. However, our laws have not yet given this matter any moral or legal attention, and there is no particular statute in the country that addresses the issue of custodial fatalities. After there was no evidence against them to show their guilt, public officials were acquitted. As a result, the police must follow the principles outlined in this case, and no one should be permitted<sup>26</sup> to take the law into their own hands.

<sup>25</sup> <https://www.lawinsider.in/columns/what-is-protection-against-arrest-under-article-22-of-the-indian-constitution>

<sup>26</sup> <https://shalomcalgarynews.wixsite.com/scch/blank-1>

## Conclusion

The report reveals that incarcerated mortality is rising in India, and numerous groups have expressed their worry about this. The repercussions of death might be natural or unnatural. However, most deaths in detention occur as a result of abuse by public agents while conducting an investigation. While it is essential and permissible by law to question an accused person, it is also required that no unlawful tactics be employed in the study.

The Tamil Nadu Police in Sathankulam, Thoothukudi district, arrested P. Jeyaraj (59 years old) and his son J. Beniks (also written by Fennix, Bennix) (31 years old) for allegedly breaking the Indian government's COVID-19 lockdown restrictions on June 19, 2020. The couple was arrested on June 19 for allegedly keeping their mobile accessory business open over its permitted hours, according to the police. On June 19, an FIR was filed against the two, and they were both arrested. On the other hand, the CBI maintained that there were no violations of the shutdown guidelines in the charge sheet. While in police custody, they were sexually assaulted and tortured, resulting in their deaths. Beniks became unwell on June 22, 2020. They were sent to the Kovilpatti General Hospital, where he died later. His father died the next day, on June 22, 2020. The deaths of two individuals in police custody in Tamil Nadu's Sathankulam town, in the Thoothukudi district, provoked a widespread outcry in the state.

In a democratic democracy, these offenses against the arrestee must be curtailed to comply with constitutional obligations and human rights considerations. The Supreme Court has taken this issue seriously and expressed worry about the increasing number of incarceration-related violence and death incidents. However, neither a moral nor a legal element is taken into account by the statute.

Other provisions in the Code of Criminal Procedure, the Indian Penal Code, the Indian Evidence Act, and the Indian Constitution protect and guarantee an arrestee's rights. However, due to the influence of politicians and a lack of proof against the perpetrators of the crime, these requirements are insufficient to prove guilt. These regulations do not address the issue of custodial fatalities in India, particularly unnatural deaths in detention centers. Even though the Supreme Court advised and recommended specific rules in various circumstances of custodial violence, the law has not been implemented. Mortality from prison violence is growing day by day in India due to a variety of causes is the state's responsibility to safeguard the Indian Constitution and make sure legal adjustments that are prima facie in breach of the rules of law. The state's vicarious obligation is to prevent these crimes from being committed by citizens' guardians.

## **Bibliography**

<http://ncrb.gov.in/StatPublications/CII/CII2017/pdfs/CII2017-Full.pdf>

<https://www.indiaspend.com/100-custodial-deaths-recorded-in-2017-but-no-convictions/>

<https://thewire.in/rights/custodial-deaths-in-india-are-a-cold-blooded-play-of-power-and-class/custody/>.

[https://www.svpnpa.gov.in/images/npa/pdfs/CompletedResearchProject/14\\_custodiandeaths.Pdf](https://www.svpnpa.gov.in/images/npa/pdfs/CompletedResearchProject/14_custodiandeaths.Pdf)

<https://knallp.com/files/8.pdf>

