

# Custodial Crimes Gross Violation of Human Rights: Award of Compensation by NHRC and Judiciary

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Human rights recognize the inherent dignity and fundamental freedom for all the members of human family and are the foundation for all basic freedoms, justice and peace in the world. They allow human beings to fully develop and use their human quality, intelligence and talent and conscience and also to satisfy the spiritual and other needs. Human Rights are basic moral guarantees that people in all countries and cultures have simply because they are people. Human Rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country.<sup>1</sup>

The violation of human rights have been denounced and condemned beyond the frontiers of the countries where they are committed. The stake in the fight for human dignity is widely perceived as a universal phenomenon.

The Government bears enormous responsibilities in ensuring protection and promotion of human rights in all their aspects. Rights of an individual in police custody are protected primarily by the Indian Constitution and by various other statutes such as Code of Criminal

Procedure, Indian Evidence Act, Indian Penal Code. India has already ratified the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights, 1966. While custodial crimes have drawn attention of legislature, judiciary, media, NGOs and human rights commissions etc., a little attention has been given on the plights of victims of custodial crimes.

Custodial violence and abuse of power of law by the enforcing agencies like police para-military and armed forces is not only peculiar but it is widespread in this democratic state. In spite of these international and national legal safeguards for the protection of rights of persons in police custody, human rights violations in custody are endemic in India. In all custodial crimes what is of real importance is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police lock up. It is pertinent to mention here that the Supreme Court through its liberal interpretation has upheld rights of the victims of custodial crimes over the years, however, the incidents of custodial crimes in police custody are still continue unabated.

The present article is a modest attempt to explore Custodial Crimes Gross Violation of Human Rights: Award of Compensation by NHRC and Judiciary.

From judicial perspective' the right to life and personal liberty' contained in Article 21 of Indian Constitution encompasses all basic conditions for a life with dignity and liberty. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a guarantee against torture and assault by the State and its law enforcing agencies.

Such an approach allows it to come down heavily on the system of administration of criminal justice; custodial justice in particular, and law enforcement. It also brings into the fold of Article 21, all those directive principles of State policy that are essential for a 'life with dignity'. The right to life guaranteed by Article 21 of the Constitution of India is not merely a fundamental right but is the basic human right from which all other human rights stem. It is basic in the sense that the enjoyment of the right to life is a necessary condition for the enjoyment of all other human rights.<sup>2</sup>

It is one of the worst crimes in the civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. Persons held in custody, by police or by prison authorities, retain their basic constitutional right except for their right to liberty and a qualified right to privacy.

In spite of the constitutional and other provisions for safeguarding the life and liberty, the growing incidences of torture, rapes and deaths in police custody has been a disturbing factor. Incidents of violation of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resort to third degree methods. The increasing number of such cases in police custody has assumed such an alarming proportion that it is affecting the credibility of rule of law and the administration of criminal justice system. In case of *Khatri vs. State of Bihar*,<sup>3</sup> the Supreme Court in a public interest litigation case ordered to investigate and punish the guilty Police officers who barbarically blinded about 30 prisoners by piercing their eyes with needles and pouring acid into their eyes. Further, Supreme Court

condemned this barbaric torture as violative of Article 21 and awarded compensation to the victims.

Over the years, it has become clear that Courts are heavily relying on the Constitution, Bill of rights, and even international norms to protect and enforce rule of law. They are equally using their powers and new strategies and tools to restrict parliamentary and executive autonomy, so that it conforms to constitutional norms, particularly relating to fundamental human rights. The interdependence between judicial conscience and reasoning has equally led to greater concerns being shown about rights by the Courts. The Supreme Court of India is not an exception to this legal compass. The Supreme Court has enlarged the scope and protection of the fundamental human rights guaranteed under the Constitution. It has devised new tools to promote a right-based administration.

The Court has visualised the award of compensation as an important methodology not only to redress the violation but also as a deterrent. Consequently, it has awarded compensation to the victims of violation of Fundamental Right to life and liberty. This is so even though the Constitution of India does not expressly provide for a *right to compensation* unlike other legal systems. Nor is there any legislation, which deals with such compensatory relief in case of infringement of Fundamental Rights, unlike other common law and continental jurisdictions. Despite this the Court has awarded compensation, exercising its inherent power to do complete justice and awarding appropriate relief under Art.32.

There are a series of cases relating to custodial deaths, Illegal detention, suicide, rape and medical negligence in which the Supreme Court, various High Courts and NHRC have awarded compensation. Some cases are being cited from the verdicts of various courts.

In case of PUDR vs. Police Commissioner, Delhi police head Quarters and another,<sup>4</sup> is a case of laborers who were forced to work in police station without any wages. When the labourers demanded the wages they were beaten up and the women labourers were stripped of their clothes and thrashed in the police station. In this atrocity one labourer Rama Swarup succumbed to the injuries. On these facts the Supreme Court ordered for payment of Rs. 50,000 to the dependents of the deceased and the women whose clothes were stripped off was awarded Rs. 5,000 as compensation. Eight other labourers who were forced to work were paid Rs. 25 per day as wages.

In a similar case of Saheli vs. Commissioner of Police, Delhi police Head Quarters and others,<sup>5</sup> the police raided the house of Kamalesh Kumari who was staying in a house with her three children. The land lord of that house took the help of police to forcibly evict them from the house. During the police raid the police trampled upon the nine years child of Kamalesh Kumari resulting in the death of the child. On these facts the Supreme Court ordered for payment of Rs. 75,000 as compensation to the mother of the deceased child.

In both above mentioned cases the similar fact was that the Supreme Court ordered to recover the amount of compensation from the concerned police officers.

In *Indu Singh & Others vs State of Uttar Pradesh* <sup>6</sup>, the Supreme Court on 10 October ordered the government to compensate a widow with Rs. 15 lakh for the custodial death of her husband 27 years ago. Indu Singh's husband Vinay Singh, a doctor by profession, had died in police custody in March 1987, allegedly during an altercation that broke between him and two constables. On 29 August this year the Supreme Court asked the government to show cause why it should not be directed to pay a lump sum compensation to the widow, at which the government sanctioned an amount of Rs. 5 lakh to be granted to her in compensation. However, when the widow asserted that she is liable to greater compensation since her husband was a doctor and his death took place a long time ago, the Court disposed of the case with the grant of an additional Rs. 10 lakh in compensation. The lump sum amount was recovered from the guilty police constables.

*Sakshi Sharma and Ors. vs. The State of Himachal Pradesh and Ors.*,<sup>7</sup> which was a case of custodial violence, the High Court has granted compensation of Rs. 15,60,000 to the victim, directed the suspension of the erring police officials and initiation of the Departmental enquiry against them. The Hon'ble High Court also directed the C.J.M.'s and the S.D.M.'s to visit the police stations and submit the reports to the Sessions Judges, who would take action against the persons who violated the constitutional and legal mandate.

In the case of *the Government of Tamil Nadu and Ors. vs. R. Dhanalakshmi* <sup>8</sup>, on 11 April 2007 a two-Judge Bench of the Madras High Court held that '*justice would be met*' by awarding

compensation of Rs 5,00,000 (US\$ 12,5000) to the family of Mr Rajmohan who had died as a result of torture in police custody.

On 19 January 2009, the High Court of Madras directed the state government of Tamil Nadu to pay compensation of Rs. 800,000 to petitioner Mrs. Krishnammal, wife of Thiru Vincent,<sup>9</sup> who was tortured to death by police at Thalamuthu Nagar Police Station, Thoothukudi District on 18 September 1999. The High Court also directed the state government to take action against the guilty police officials.

In the matter of custodial death of an Adivasi Landless Labourer Ram Kumar Dhruv at Suhela Thana, District Raipur, Chhattisgarh, orders passed on 20.07.2006.

Ram Kumar Dhruv who was arrested on charges of theft of goods worth Rs. 971, not confessing his guilt, he was detained in the police lock-up on 11.08.2004. On the morning of 13 August, dead body of Ram Kumar was seen hanging with a piece a blanket used as a rope, in the toilet attached to the lock-up in Police Station. His dead body was sent for post-mortem examination. Dr. A.P. Naik and Dr. G.S.Som conducted the post-mortem examination and reported that cause of death was asphyxia due to hanging and was suicidal case. The final orders passed by the High Court are historic in the sense that not only an enquiry by the Central Bureau of Investigation has been ordered, but a compensation of Rs. 10,00,000 ( Rupees Ten lakhs only) has also been awarded to the victim's widow and children. The Court has directed the CBI to put before the High Court the results of its investigation in January 2007. This is probably a unique judgment by any High Court in India, and turns out to be a mile-stone in making the police

administration accountable on such a blatant violation of human rights.

In *Rudul Shah vs. State of Bihar*<sup>10</sup>, the Supreme Court has held that the supreme Court under Article 32 of the Constitution of India can grant compensation for the deprivation of personal liberty though ordinary process of Court may be available to enforce the right and money claim could be granted by the Court. Accordingly compensation was awarded. This view was reiterated in *Nilabati Behera vs. State of Orissa*<sup>11</sup> and the Supreme Court awarded monetary compensation for custodial death lifting the State immunity from the purview of public law. The Apex Court held that: " It is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions as are permitted by law which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the state to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law while the citizen is in custody. The precious rights guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, under-trials or other prisoners in custody except according to procedure established by law. The duty of care on the part of the State is strict and admits no exceptions. The wrongdoer is accountable and State is responsible if the person in custody of the police is deprived of his life except according to the procedure established by law."

In *Bhim Singh vs. State of Jammu and Kashmir*<sup>12</sup>, an MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs. 50,000 as

compensation. The Court referred to *Rudal Shah and Sebastin M Hongray vs. Union of India*<sup>13</sup> cases and observed:

That there is no doubt that the Constitutional rights of Mr. Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free.

Similarly, NHRC has considered the cases of custodial violence seriously and exerted every effort to protect the human rights of the persons in police or judicial custody. Some citations are as follows:

In case of a boy allegedly beaten brutally and later shot dead by Police in Mathura, Uttar Pradesh,<sup>14</sup> the Commission took *suo motu* cognizance of a report telecast on IBN-7 on 20 March 2013 about the death of Jitender during the course of police action in Mathura. It was reported that Jitender was stopped by police personnel and bribe was demanded from him while he was on his way for selling goods on his tractor. On refusal to pay, he was brutally beaten and later shot dead. After the incident, the police fired upon the protesting mob which resulted in bullet injuries to five persons. It was also reported that after the intervention of the Inspector General of Police, a case u/s 302 IPC was registered against the SHO and four Constables of Shergarh Police Station.

The Commission considered the matter on 30 October 2015 and directed to pay a sum of Rs.5.00 lakhs to the next of kin of deceased Jitender which was paid on 11 February 2016. A charge-sheet had also been filed against the five delinquent policemen.

Illegal Detention of Maujvir Singh by Police at Nai Mandi, Muzaffarnagar, Uttar Pradesh.<sup>15</sup> In this case, the complainant alleged illegal detention of her husband in police custody. The Commission on scrutiny of the police report observed that Maujvir Singh was kept in police custody illegally for 6 days for which Inspector Vinod Sirohi and SI Rafiq Parvej have been found to be responsible and that the human rights of the complainant's husband were violated. Therefore, the Commission recommended a compensation of Rs. 25,000/- (Rupees Twenty Five Thousand only) to be paid to the victim Maujvir which was paid to victim Maujvir Singh on 18 April 2016. The Commission closed the case with the directions that the departmental proceedings initiated against the defaulter police officials are concluded expeditiously.

In case of death of Under-trial Ram Avtar Baitha in Central Jail, Siwan, Bihar,<sup>16</sup> the Commission took cognizance of the matter on 10 June 2012 on the basis of intimation received from the Superintendent, Central Jail, Siwan that an under-trial Ram Avtar Baitha lodged therein had died on 19 May 2012. The NHRC on perusal of the reports on record and the Magisterial Enquiry Report found that the cause of death as opined by the Doctors was due to shock and hemorrhage of "head injury" caused by falling on the ground on 19 May 2012. On falling down he was alive. The Doctor as well the Compounder of Siwan Jail Hospital admitted that they

were not present in the prison at the time of the incident which showed negligence on the part of medical staff of the jail hospital. On perusal of the reports on record, the Commission found the jail authorities liable for the delay in providing first aid. This clearly indicated that it is a case of violation of human rights of the deceased. Accordingly, the Commission on 1 April 2015 recommended under the Protection of Human Rights Act, 1993, a sum of Rs. 1,00,000/- (Rupees One Lakh only) to be paid to the next-of-kin of the deceased as compensation.

Illegal Detention and Torture of Vijay Singh and His Nephew Jitendra Singh of Village Mdhaka by Constables of P.S. Cantt. Agra, Uttar Pradesh.<sup>17</sup>

The case under reference relates to illegal detention and torture of Vijay Singh and Jitendra Singh in police lock-up on 6 May 2013 without registration of a FIR.

The nephew of the complainant Jitender Singh was married to Rajni. After the marriage they had some differences. Consequently, Rajni submitted a report under the Dowry Prohibition Act, 1961. This case was pending in Reconciliation Centre. At the instance of his father-in-law Rajveer Singh both were taken to police custody illegally. The Commission on consideration of the matter on 1 September 2014 and again on 29 August 2015 and observed that it being a case of violation of human rights the Commission recommended a sum of Rs. 50,000 each as compensation to be paid to the victims. The compliance report has since been received by the Commission and the case had already stands closed.

Accused of Theft Loses Eye Sight due to Alleged Police Torture in Virudhunagar District, Tamil Nadu.<sup>18</sup> In this case it was alleged

that one Pathampriyan (student of 9th class) was allegedly picked up by the police on 24 September 2012 on the charges of theft and beaten up by the police till he lost sight of his right eye. The Doctor who treated the boy had found injury marks on the body of the boy. A Writ Petition (MD) No. 12783/2012 filed by Smt. G. Paripooranam seeking compensation of Rs. 5,00,000 (Rupees Five Lakhs only) for torture of her son Pathampriyan by the police. Upon consideration of the reports, the Commission found that the boy was subjected to brutal torture during interrogation by the police. The Commission, therefore, recommended to pay a sum of Rs. Fifty Thousand only as monetary relief to the victim boy. If the High Court eventually finds that the loss of vision in the right eye was caused by police beating and a higher amount of compensation is awarded by the High Court, the amount of Rs. 50,000 shall be adjusted. On compliance of its recommendation, the Commission closed the case.

Death of Devu Sattababu in Puducherry Police Custody.<sup>19</sup>

The Commission received a complaint from Devu Chandra Kala alleging that her husband Devu Sattababu was taken away by the police on 10 November 2011 and he died on 11 November 2011 while in police custody. Moreover, the police did not file any FIR as to the death of her husband.

The Commission took cognizance of the complaint and pursuant to its directions, the report Of DIG of Police, Puducherry, dated 2 February 2015 stated that Devu Sattababu died on account of consuming poison which fact was known to five police officers and a case had been registered. On completion of investigation a charge sheet too had been filed in the case. On consideration of the report,

the Commission on 28 April 2015 observed that the report itself admits that the death had occurred while in police custody and due to negligence of their officers, hence the next of kin of the deceased be awarded a compensation of Rs. Three Lakh only to the complainant, and since the compliance report has been received the case has been closed by the Commission.

Harassment to Arif by Police at P.S. Janakpuri, Saharanpur, Uttar Pradesh.<sup>20</sup> The complainant in this case alleged that on 3 June 2012, her son Arif was picked up by the police from his shop at the instance of certain persons who had to recover money from the complainant's son and was beaten by the police. It was further alleged that the complainant approached the SHO for his release but he refused to do so till the time the money was returned to those persons, and also threatened her to implicate her son in a false case.

The Commission upon consideration of the matter and material placed on record directed the Government of Uttar Pradesh for payment of compensation of Rs. 25,000 (Rupees Twenty-five Thousand only) to the complainant, Smt. Wasim Akhtar.

In response to the compliance report submitted on 21 July 2016 along with proof of payment and in view of the fact that departmental action had been taken against the delinquent SHO, for keeping the victims in illegal detention, the Commission closed the case.

Death of Undertrial in Central Jail, Tihar, New Delhi.<sup>21</sup>

The Superintendent, Central Jail, Tihar informed the Commission on 31 January 2012 that an under-trial Naim *alias* Nadeem took medicine for hyper-acidity and for pain in right

shoulder from the jail dispensary but thereafter in the morning of 30 January 2012, he was found dead.

The Commission on 21 February 2012 took cognizance of the case and concluded that, as per jail rules, the inmates are not permitted to consume or possess any Narcotic or Psychotropic substance during their stay in the jail or in the lock up during the court hearing. The Commission perused the report on 21 April 2015 and observed that 03 plastic packets were found in the stomach of the deceased during post mortem examination and statement of the doctor revealed that the deceased died due to nicotine poisoning. This raised a serious question regarding the circumstances in which the deceased came in possession of nicotine and *charas* which all were found in his vomiting samples. The fact that he was able to procure and had consumed a narcotic substance while being in the judicial custody is sufficient to conclude that the Prison authorities and Delhi Police had been negligent in performing their duties and for that reason, were jointly responsible for the death of Naim *alias* Nadeem. As negligence on the part of the above two authorities was proved, the Commission on 21 April 2015 recommended a sum of Rs. One Lakh only to be paid to the next-of-kin of the deceased in the ratio of 50:50 by Prison authorities and Delhi Police.

Thus, NHRC and the judiciary has played a vital role in protecting and rehabilitating numerous victims of custodial crimes.

In a welfare state the State must strive to establish just relations between the rights of the individual and the

responsibilities of the state. The award of compensation as a remedial measure has been established by interpretative techniques of the Supreme Court, even though the Court has not been consistent in awarding the same. The award of compensation by the Court has evolved as a discretionary relief, even though it has emphasized justifications for such a relief.

It may be added here that the compensatory relief serves both deterrent as well as restitution purposes. It is pertinent to note that despite many objections to the Courts awarding compensation as a remedy for violation of fundamental human rights, the Courts have leaned in favour of compensating the individuals for injuries suffered at the hands of State and its employees. It is submitted that preventing and remedying injury to an individual is the bedrock of many constitutional protections. Also the Court's attention is focused towards establishing constitutional rights so that individuals are protected from State lawlessness. Such an approach is warranted for establishment of astute constitutionalism and rights conscious and accountable executive. Indeed, such individual protection would have been considerably enhanced, had this right to compensation been made an enforceable right in India also. Rather, in series of cases on compensation delivered by the Supreme Court and various High Courts during the last decade also given an impression that life can be put down with monetary compensation give rise to a sad note of fixing rates for the various atrocities. Hence, it is submitted that the Supreme Court should give equal priority to punishing the guilty police along with payment of compensation to the victim. It is further submitted that the

compensation also should be punitive and exemplary and not normal.

In the initial phase of evolution of compensatory relief, the Court did not offer any firm jurisprudential basis for such a remedy. It used different terminology like exemplary costs, and exemplary damages. However, the Court later relied on Constitutional tort theory to justify the award of compensation. The Supreme Court has taken a view that a claim in public law for compensation is distinct from, and in addition to, the remedy in private law for damages for the tort resulting from the contravention of Fundamental Rights. The Court has also relied on Art.9 (5) of international Covenant on Civil and Political Rights, 1966, while justifying the award of compensation under Art.32 of the Constitution. This is despite India having put a reservation to Art.9 of the Covenant, stating that the reservation has lost its importance.

### **End notes**

1. Shashi Motilal and Bijayalaxmi Nanda, *Human Rights, Gender and Environment*, New Delhi, Allied Publishers, 2009, p.381.
2. Constituent Assembly Debates. Vol. VII, 953
3. AIR 1981 SC928.
4. AIR (1989) 4 SCC 730.
5. AIR (1990) 1 SCC 422.
6. WP Cr. 40 of 2014.
7. CWP No. 3684 of 2009, Decided on: 18.06.2012.

8. Writ Appeal No. 1169 of 2004 and WAMP No. 2198 of 2004.
  9. Writ Petition No.6195 of 2000 and Writ Petition No.9269 of 2000.
  10. AIR (1983) 4SCC141.
  11. AIR (1993) 2 SCC 746.
  12. AIR (1985) 4 SCC 677.
  13. AIR (1984) 3SCC82.
  14. Case No. 10704/24/52/2013.
  15. Case No. 15083/24/54/2013.
  16. Case No.1679/4/37/2012-JCD.
  17. Case No.18400/24/1/2013.
  18. Case No. 2861/22/45/2012.
  19. Case No.56/32/4/2011-PCD.
  20. Case No. 18702/24/64/2012.
  21. Case No.764/30/9/2012-JCD.
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- A large, semi-transparent watermark of the JETIR logo is centered on the page. The logo consists of a shield-shaped border containing a laurel wreath. In the center of the wreath is a stylized flower with five petals in different colors: red, cyan, blue, green, and yellow. The word 'JETIR' is written in a large, light blue, serif font across the middle of the shield.