

# Custodial deaths and human rights issues



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Whenever we go through daily newspapers or news on broadcast media or internet, one of the most common topics we can find is deaths in custody. This is something that we get to hear about most often from people surrounding us, and it has been happening for quite a long time, not only in a particular country or region, but in the whole world. However, many people is dying in custody each year. The deaths while in custody remains a very controversial topic as it is believed that the main reasons of these deaths are kept in darkness from the world.[1] These deaths could be a regular subject for the ones in charge of the custody, but bring a major issue in the limelight which is the gross violation of human rights. According to the Joint Committee on Human Rights (JCHR), “ When the state takes away a person’s liberty, it assumes full responsibility for protecting their human rights. The most fundamental of these is the right to life.”[2] As we go through this paper, we will discuss more about custodial deaths and its impact on international law and human rights.

Custodial deaths are referred to those deaths, while in custody of the police, prison service, or other authorities. The causes of these deaths or we can say that the custody authorities are often accused of abuse, cover-ups, racism and neglect.[3] Some examples of custodial deaths are Operation Clean Heart by the government of Bangladesh where a minimum of 32 people died; death of about 100 prisoners in United States custody in Iraq and Afghanistan since 2002; and at least 650 people were killed in Jamaica by the police officers in 1999 which were all unlawful killings, but none of them were convicted since then.[4]

## **Human Rights:**

Human rights are “ rights and freedoms to which all humans are entitled”. [5]These rights protect us from severe political, legal, and social abuses. A few examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, the right to engage in political activity, and the right to life.[6]All these rights are protected by law for the wellbeing of a society. These rights, if violated, can lead to severe consequences or penalties if proved guilty to the sovereign authority.

## **Human Rights against Custodial Deaths:**

The most fundamental part of human rights is the right to life.[7]This type of human rights which protect people detained by the State falls under the law of Human Rights Act 1998. A death penalty or even custodial deaths violate these rights according to many human rights activists from around the world. A state ensures protection of its people enforced by law. They have more responsibility about a person’s protection when they take them into custody in doubts of unlawful acts. Therefore, whenever a person dies in custody, it raises a major human rights issue.

Besides people who are serving whole-life sentences, many others die in custody. These custodial deaths maybe caused due to natural causes or diseases, attacks by other prisoners, self-infliction, third-degree tortures while in remand, and many other reasons. Many of those people who die in custody are held on remand in either police custody or prison for doubts of unlawful acts, and are convicted of no criminal offence. These are serious

violations of human rights as every individual has the right to life, which is protected by the State and these deaths “ are not” enforced by law.

## **Custodial Death and Human Rights Concerns around the World:**

In Bangladesh, a huge battalion of Bangladesh Rifles (BDR) killed more than seventy army officers and others dead in February 25 and 26, 2009. After that, most soldiers of Bangladesh Rifles were held in prisons as suspects for the massacre. More than a thousand soldiers including twenty civilians were detained, and the others are still in the police custody. From a statement of the Bangladesh Rifles on April 23, 2009, it was said that “ Sixteen detainees have died in custody – four from suicide, six from heart attacks, and six from other diseases.”[8]But Brad Adams, Asia Director at Human Rights Watch[9], said that he couldn’t find a solid reason for which the detainees have committed suicide, and thus, he has urged the government to take immediate actions to stop such deaths in custody.

From credible sources in Bangladesh, reports were found by the Human Rights Watch on torture of detainees while they were in custody. One of the suspects told that he was tortured with electric shocks for seven days by the Rapid Action Battalion (RAB)[10]. After the death of another suspect, a family member said that he was in good health before taken into custody and has no reason of sudden death. In a medical report of a dead suspect, wounds of torture were inflicted, which the authority denied by saying that the wounds may have been caused while they were trying to escape following the rebellion.

Adams said that these explanations are not credible and that “ torture is a regular ‘ investigation technique’ in Bangladesh and killing of detainees in custody is an endemic problem.” The detained suspects have been denied access to family and lawyers in most cases.

In Vietnam, Human Rights Watch reported that they have received nineteen documents of brutality cases in twelve months till September 2010, which resulted in deaths of fifteen people. Deaths in custody were reported from major cities in Vietnam which has provoked the public protestant in the country and raised serious concerns.

In a few cases, the detainees died due to massive beatings while in custody of the police or civil defense force, and in other cases, people died in public areas where the police used excessive forces. In many cases, detainees are taken into custody and killed for minor violations of law.

In June 30, 2010, a person died in police custody after being detained following a dispute with his mother. In another case, which was on July 23, 2010, a man was arrested for riding a motorbike without a helmet. He was then taken is custody for questioning and hours later, it was reported that he died. This has raised serious concerns in Vietnam for such a custodial death.

In all these nineteen incidents in just twelve months time, not a single involved police officer was convicted by the local court for their actions.

There have been major protests by the media as the government has high restrictions and control over their local press. Only a few police officers have been detained or suspended, which was caused due to media exposure of the incidents and severe protests from the public. Unless the government

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shows serious concerns regarding such human rights issues, it is very uncertain that such killings can ever be stopped.

In Afghanistan, a soldier named Jamal Nasser died in March 16, 2003 while in custody of the United States Army.[11]After eighteen months of his death, it was reported that his death attributed to a kidney infection. Later on, investigations found that the cause was just a fiction. According to Senator Patrick Leahy, “ The detainee, Jamal Naseer, died in March 2003, allegedly after weeks of torture by American soldiers. Because the Special Forces unit that reportedly controlled the detention facility failed to report the death, it was never investigated. This incident is very troubling on its own, but, like so many other incidents we have discovered, it points to a much larger problem. The U. S. Army Criminal Investigation Command received a tip about Naseer’s death earlier this year, but could not investigate the matter due to a lack of information.”[12]An army detective at Bagram Airbase told the LA Times that there are no records for which they weren’t able to conclude the investigation process.

### **Human Rights Law:**

There are many human rights law assigned by the sovereign authority for the well being of a society by ensuring the safety of every individual. The law which concerns with the deaths in custody is Article 2 of The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), The Human Rights Act 1998, which states that:

“ 1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a

court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”[13]

Article 2 clearly provides that the state should not deprive you of your life, except in very limited circumstances.[14]According to the article, whenever someone is killed by a police, army or prison officer, the incident will always link to “ right to life”. In such a circumstance, investigations will be called and a failure in the investigation at the hands of a state official is likely to be a breach of Article 2.

## **Conclusion:**

Many people have been killed and are still being killed while in custody of the state officials in almost every country. The state is responsible for the protection of its each and every single individual and the ones violating laws shall be detained or punished after the consequences has been sanctioned by the higher authority. But any kind of custodial deaths are unlawful as every human has the right to life, and they cannot be punished unless they

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are proved guilty. Custodial deaths fall under the Human Rights Act 1998, Article 2 which states that custodial deaths should be investigated and if not done, then it would be a breach of law. After studying this paper, we are able to conclude that custodial deaths have become a global human rights issue and these deaths are gross violation of Human Rights. The state must take all necessary steps in order to prevent deaths in custody, ensure that every individual is well protected by law, and only the ones proved guilty are punished or detained. Success in preventing will lead to the well being of the society.