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# EXTENDED CUSTODY, ERODED RIGHTS? - EXAMINING THE PROVISIONS OF POLICE CUSTODY UNDER BNSS, 2023

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## I. ABSTRACT

Reforming the established laws over time is a common societal norm every progressive society adopts. The evolution of laws over time is an important factor in determining the democratic outlook and framework adopted by that nation. Criminal laws have undergone several changes with time to adjust to the changing needs for effective laws for sustaining law and order. Criminal Procedure Code, 1973, provides the procedure when the investigation cannot be completed within the initial twenty-four hours of the detaining of the accused by the police. Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Criminal Code of 1973 with effect from July 1<sup>st</sup>, 2024. The provisions of police custody were altered to increase the duration of time in which a police officer can seek custody. The changes drew an alarming response as the provisions sought to visibly empower the police with extensive power to detain a person for investigation. It opened a Pandora's box creating uncertainties for the future of the rights of the detained person. Globally, the pre-trial detention period is very low, which resonates with the fact that a prolonged duration of custody cannot be viable per se merely because it will ease the process of investigation to a great extent. Somewhere, there has to be a balance between the law and the fundamental human rights of the detained persons. The provisions could have been applied in a more efficacious manner, for instance making the provisions regulatory for only non-cognizable offenses to ease the investigation and more effective redressal of such cases.

## II. Key Words:

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Police Custody, Section 167, Criminal Procedure Code, Section 187, Bharatiya Nagarik Suraksha Sanhita, Custodial Torture

### III. INTRODUCTION

The Code of Criminal Procedure, 1973 (CrPC) was introduced for the effective administration of the Indian Penal Code, 1860 (IPC). It is a procedural law. The procedure relating to investigation, prosecution, arrest, and bail for offenses is governed under Cr. P.C. It was first passed in the year 1861 to provide a comprehensive code and solve the problem of the multiplicity of legal systems in India. Over time it has been revised multiple times as per the needs. The act was repealed in 1973 by the existing Cr. P.C., and changes like “*anticipatory bail*” were introduced.<sup>2</sup> It was amended later in 2005 also, with significant changes such as provisions for “*plea bargaining*” and “*rights of arrested persons*”.<sup>3</sup>

The Apex Court has interpreted the Cr.P.C. in varied ways and revised the application of the code over the years. These include:

“(i) mandating the registration of an FIR if the complaint relates to a cognizable offense, (ii) making arrests an exception when the punishment is less than seven years of imprisonment, (iii) ensuring bail for the bailable offense is an absolute and indefeasible right and no discretion is exercised in such matters.”<sup>4</sup>

The Court has also considered the procedural aspect, such as establishing guidelines for “*custodial interrogations*” and emphasizing the importance of “*speedy trials*.”<sup>5</sup> “*However, the criminal justice system continues to face challenges like case backlogs, trial delays, and concerns about the treatment of underprivileged groups.*”<sup>6</sup> The BNSS was introduced on August 11, 2023, in Lok Sabha. It replaced the Code of Criminal Procedure, 1973 (CrPC) and came into force on 1<sup>st</sup> July 2024. The act does not have any retrospective effect. The Standing Committee on Home Affairs examined the Bill and

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<sup>2</sup> Criminal Procedure Code, 1973, No. 2, Acts of Parliament, 1974 (India)

<sup>3</sup> Code of Criminal Procedure (Amendment) Act, 2005, No. 25 OF 2005, Acts of Parliament, 1974 (India)

<sup>4</sup> Dilip K. Basu v. State of W.B., (1997) 6 SCC 642

<sup>5</sup> Hussainara Khatoon v. State of Bihar, 1996, 1979 AIR 1360

<sup>6</sup> Law Commission of India, 1979, Report No. 78

gave various suggestions. BNSS was introduced on December 12, 2023, incorporating some of the Committee's suggestions.

#### **IV. RESEARCH OBJECTIVES**

- To dissect and examine the changes and modifications in the new criminal laws regarding provisions of police custody, Sec. 183(2), Bharatiya Nagarik Suraksha Sanhita, 2023.
- To determine the impact of the extended duration of police custody upon the fair investigation and trial and the individual rights of the accused.
- To identify whether the provisions pose a danger to the individual rights and personal liberty of the detained person.

#### **V. RESEARCH QUESTIONS**

- What procedure is followed as per the BNSS when the investigation cannot be completed within twenty-four hours of detention? Under what circumstances the duration of the police custody and the judicial custody can be extended as per the Cr.P.C. and BNSS?
- Will the changes will be operational with immediate effect? Do the new provisions differ completely or are complementary to the custodial provisions under Cr.P.C.?
- What impact will the change in provisions of Sec. 167 Cr.P.C., 1973, now Sec. 183(2) B.N.S.S., 2023 will have? Will it endanger individual rights and jeopardize fairness in investigation and trial proceedings?

#### **VI. RESEARCH HYPOTHESES**

The Magistrate is empowered as per Section 167(2) of the Criminal Procedure Code of 1973, to authorize the detention of a person in custody beyond the period of 15 days, i.e, to a maximum period of 60 or 90 days (depending on the extent of prescribed punishment), provided that such further custody could not be police custody. It also provides for a default bail if the investigation is not completed within the prescribed period.

The updated provisions regarding police custody under Sec. 183(2) BNSS provides that the police can seek custody in whole or in part during the initial period of the 40 days or 60 days of the 60 and 90 days period respectively. The provision remarkably empowers the police. The increased duration of police custody can profoundly alter the fairness in the proceedings and may lead to unfairness in the investigation process, by distorting the material facts of the case as well as making the detained person prone to custodial violence and corroboration of the material and oral evidence thereby hindering the whole course of the investigation.

## VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles, and legal digests are also consulted. The research process involves the identification, collection, and critical analysis of these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

## VIII. MEANING AND TYPES OF CUSTODY

The term custody is not defined explicitly under any statute. However, it is used and referred to in various laws, such as the Civil Procedure Code, of 1973, the Indian Penal Code, and the Juvenile Justice (Care and Protection of Children) Act, of 2015. *"The word 'custody' means apprehending someone for protective care."* Under Indian Law, custody can be of two types- police custody and judicial custody.

*“When following the receipt of an information/complaint/report by police about the occurrence of a crime, an officer of police arrests the suspect involved in the crime reported, to prevent him from committing the offensive acts further, such officer brings that suspect to the police station, it's called Police Custody.”*

In the case of *Chhotey Lal, v/s State of Uttar Pradesh*<sup>7</sup>, it was observed that *“the word custody in Section 27 of the Evidence Act does not mean only physical custody. If a person is under the surveillance of the police and cannot get away from a police officer, it will also be considered custody.”*

In 1998, in the case of *Bibachha Baitharu v. State of Orissa*<sup>8</sup>, the observation of *Chhotey Lal VS State of Uttar Pradesh* was upheld, and it also added *“the restriction on person movement is also considered as custody and formal arrest and formal custody are different.”*

*“Police Custody”* means *“physical custody of the accused”* with the police while *“Judicial Custody”* means an accused is in *“the custody of the concerned Magistrate”*. In police custody, the accused is kept in the police station lockup while in the latter, it is the jail. When the Police take a person into custody, the Cr. P.C. comes into action and they have to *“produce him/her before a Magistrate within 24 hours of the arrest.”*<sup>9</sup> Under police custody, the accused can only be sent in police custody for a period of initial 15 days while judicial custody can be extended up to an initial 60 or 90 days of detention, as held by the Supreme Court in *State v. Dharampal, 1982*<sup>10</sup>.

## **IX. PROCEDURE WHEN INVESTIGATION CAN NOT BE COMPLETED WITHIN 24 HOURS**

Section 167 of Cr. P.C. specifies the procedure when an investigation cannot be completed within 24 hours of the arrest of an accused:

*“167. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of*

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<sup>7</sup> *Chhotey Lal vs State Of Uttar Pradesh, (1953) 1954 CriLJ 1445*

<sup>8</sup> *Bibachha Baitharu v. State of Orissa, (1991) 1998 CriLJ 1553*

<sup>9</sup> *Criminal Procedure Code, 1973, § 167, No. 2, Acts of Parliament, 1974 (India)*

<sup>10</sup> *State v. Dharampal, 1980, CriLJ 1394*

*sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*

*(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole;*

*Provided that--*

*1[(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding*

*(i) ninety days, where the investigation relates to an offense punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years;*

*(ii) sixty days, where the investigation relates to any other offense,*

*and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for that Chapter;]"<sup>11</sup>*

It is not obligatory on the part of the Magistrate to grant remand. The police have to state the reasons for seeking an extension of custody beyond the period of 24 hours as reiterated in *State of Gujarat vs. Swami Amar Jyoti Shyam*,<sup>12</sup>

The primary goal of extending detention under Section 167 is to safeguard society and the accused by keeping them apart. This extension of custody ensures that the accused does not evade the law and appears for all police inquiries regarding the investigation. The Supreme Court in its three-judge bench verdict in the case of *Bikramjit Singh vs. State of Punjab*,<sup>13</sup> held that the right to "default bail" is not merely a statutory right under

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<sup>11</sup> Criminal Procedure Code, 1973, § 167, No. 2, Acts of Parliament, 1974 (India)

<sup>12</sup> *State of Gujarat vs. Swami Amar Jyoti Shyam*, MANU/GJ/0125/1988

<sup>13</sup> *Bikramjit Singh vs. State of Punjab*, Criminal Appeal no. 667 of 2020

the first proviso to Section 167(2) of the Cr.PC, but it is part of the procedure established by law under Article 21 of the Constitution of India.

Therefore, an accused has the fundamental right to be released on bail if the first proviso conditions under Section 167(2)<sup>14</sup> of the Cr. P.C. are met. Section 167 ceases to apply beyond 60 or 90 days or after charge sheet filing. Section 167 ceases to be applicable to extend remand, till the police files the charge sheet or beyond the prescribed period of 60 days or 90 days as the case may be. The Supreme Court and High Courts have consistently upheld this. Section 167's purpose is to obligate investigating agencies to finish investigations and file a "charge sheet" within the specified timeframe. The Magistrate must not only direct but also record reasons for remanding an accused. If detention is deemed unnecessary, reasons for this must still be recorded.

## **X. RIGHTS OF THE ACCUSED/ DETAINED PERSON**

The rights of a person detained under custody begin as soon as he is arrested. The Constitution of India under Article 22<sup>15</sup> provides for the protection of the arrested person, "he has a right to be informed of the reason for arrest and he must be produced before the nearest Magistrate within 24 hours."<sup>16</sup>

Article 22 (1) also provides that "he shall be entitled to consult and to be defended by a legal practitioner of his choice", (Sec. 50, Cr. P.C.) which is a corollary to Article 22, Clause (1) and (5) of the Constitution of India,<sup>17</sup> enacts, "that the persons arrested should be informed of the ground of arrest, and of right to bail".<sup>18</sup>

After the person is legally arrested and under custody, his rights are protected throughout the period he is detained "For the custody to be legal, a person may not be held in custody for more than 15 days."<sup>19</sup> For the extension of custody for a maximum of 60-90 days, a Magistrate must be convinced that there are "exceptional circumstances"

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<sup>14</sup> Criminal Procedure Code, 1973, § 167, cl.2, No. 2, Acts of Parliament, 1974 (India)

<sup>15</sup> INDIA CONST. art. 21

<sup>16</sup> Dilip K. Basu v. State of W.B., (1997) 6 SCC 642

<sup>17</sup> INDIA CONST. art. 22, cl. 1. Cl.5

<sup>18</sup> Dilip K. Basu v. State of W.B., (1997) 6 SCC 642

<sup>19</sup> Central Bureau of Investigation, New Delhi vs. Anupam J. Kulkarni, MANU/SC/0335/1992



present in the case, depending on the “*nature of the crime*” being investigated. A cautious reading of S.167 (1) of the code of criminal procedure<sup>20</sup> makes it clear that the “*officer in charge of the police station or the investigating officer (if he is not below the rank of sub-inspector) can ask for remand only when there are grounds to believe that the accusation or information is well founded and it appears that the investigation cannot be completed within twenty-four hours as specified under Section 57.*”<sup>21</sup>

Hence, the power of Magistrate to give remand is not mechanical or cursory, there must subsist adequate grounds for the same. In the case of *Raj Pal Singh v. State of U.P.*<sup>22</sup>, it was held that the “*remand order sheet need not look like, a judgment delivered after full trial but the application of main must be evident.*”<sup>23</sup>

## **XI. MODIFICATIONS IN THE MANNER AND THE DURATION OF GRANTING POLICE CUSTODY**

### **A. EXTENSION OF THE DURATION OF POLICE CUSTODY**

The provisions relating to custody that have been altered are given under Section 187 of the *Bhartiya Nagarika Suraksha Sanhita, 2023* as follows:

“187. (2) *The Judicial Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been canceled, authorize, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in subsection (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction.*”<sup>24</sup>

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<sup>20</sup> Criminal Procedure Code, 1973, § 167, No. 2, Acts of Parliament, 1974 (India)

<sup>21</sup> Criminal Procedure Code, 1973, § 167, No. 2, Acts of Parliament, 1974 (India)

<sup>22</sup> *Raj Pal Singh v. State of U.P.*, (1983) Cr.L.J. 109

<sup>23</sup> District Court, [https:// districts.ecourts.gov.in](https://districts.ecourts.gov.in), (last visited 22 July, 2024)

<sup>24</sup> *Bhartiya Nagarika Suraksha Sanhita, 2023*, § 187 cl. 2, No. 10, Acts of Parliament, 1949 (India)

The detention period, i.e., the short confinement period after the arrest and before being released is the same under both S. 167(Cr. P.C.) and S. 187(BNSS) i.e., 60 or 90 days.

Under Cr.P.C. the *“period of police custody cannot exceed fifteen days”*, though the remaining period that is, up to the period of detention ends, the accused can be sent to judicial custody. But, under S. 187(3) BNSS,<sup>25</sup> the Magistrate can authorize the police custody detention for a period *“exceeding fifteen days”*.

Under BNSS this procedure has been modified such that, although the period of 15 days for custody has been the same it could be authorized in *“whole or in parts at any time during the initial 40 or 60 days out of the 60 or 90 days period”*. This could potentially lead to denial of bail during custody. The police can anytime seek to take the person back in the police custody.

Under the Unlawful Activities (Prevention) Act, of 1976, the period of police custody is limited to the first 30 days, which differs from the provisions given under the BNSS<sup>26</sup> The Supreme Court also reiterated that *“police custody should be taken in the first 15 days of remand.”*<sup>27</sup> The extension of 40 or 60 days in duration of custody should be utilized as an exception and not as a general rule.

Additionally, the BNSS does *“not require the investigating officer to provide reasons when seeking police custody for someone in judicial custody”*. The recommendation of the Standing Committee, 2023 was that Sec. 187(2) and (3) should be clarified, but this has been applied without any changes.

### **B. DURATION OF THE PRE-TRIAL DETENTION IN DIFFERENT COUNTRIES**

Country	Limit(Max.) of Police Custody (General)
India (under Cr.P.C.1973)	15 Days
India (under BNSS, 2023)	90 Days

<sup>25</sup> Bhartiya Nagarika Suraksha Sanhita, 2023, § 187 cl. 3, No. 10, Acts of Parliament, 1949 (India)

<sup>26</sup> Unlawful Activities (Prevention) Act, 1976, No. 37 of 1967, Act of Parliament (India).

<sup>27</sup> Central Bureau of Investigation v. Anupam J. Kulkarni, SC 1992 AIR 1768

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Australia	12 Hours
South Africa	48 Hours
United Kingdom	96 Hours

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## XII. IMPACT OF THIS CHANGE UPON INVESTIGATION AND FAIR TRIAL

### A. *The extension of powers of police*

The CrPC governs the powers of the police to maintain public order, prevent crimes, and undertake criminal investigations. These powers include arrests, detention, search, seizure, and use of force. These powers are subject to restrictions to safeguard individuals from misuse of police powers leading to excessive use of force, illegal detentions, custodial torture, and abuse of authority.<sup>28</sup> The Supreme Court has also issued various guidelines to prevent such arbitrary exercise of police powers.<sup>29</sup> The BNSS amends the provisions related to detention, police custody, and the use of handcuffs, which may present some issues.

The same decision was given by the Apex Court in the case of *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni*, where the same issue arose of whether the person arrested and produced before the nearest Magistrate as required under Section 167 (1) can still be remanded to police custody after the expiry of the initial period of 15 days. The relevant excerpt of the judgment is as follows: “*These observations make it clear that if an accused is detained in police custody the maximum period during which he can be kept in such custody is only fifteen days either under a single order or more than one when such orders are for lesser number of days but on the whole such custody cannot be beyond fifteen days and the further remand to facilitate the investigation can only be by detention of the accused in judicial custody.*”<sup>30</sup>

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<sup>28</sup> Law Commission of India, 2017, Report No. 273, .

<sup>29</sup> Maneka Gandhi v. Union of India, SC 1978 AIR 597.

<sup>30</sup> Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni MANU/SC/0335/1992

## B. *Skepticism of the police custody*

Placing individuals in police custody heightens the risk of custodial violence and torture<sup>31</sup>, infringing upon the arrested person's fundamental rights protected against state-inflicted torture and assault under Article 21,<sup>32</sup> as established in the DK Basu case.<sup>33</sup>

This extended detention also amplifies the potential for the police to manipulate evidence, compromising the accused's right to a fair trial. This is particularly concerning in instances where the accused belongs to a socially disadvantaged class and cannot afford legal representation.<sup>34</sup>

Prolonged police custody elevates the susceptibility of the accused to coerced confessions and the fabrication of evidence.<sup>35</sup> A notable example involves the use of torture to coerce individuals into signing blank documents, subsequently employed by the police to concoct “*disclosure statements*”. These statements often include details about the location of a deceased body or other items pertinent to the crime, creating the illusion that the police discovered them based on the accused's statement and making them admissible u/s 27 of the Indian Evidence Act.<sup>36</sup> The Supreme Court in the case of Nathu<sup>37</sup> held that “*prolonged Police Custody can even lead to the court considering the statements being made involuntary unless proven cogently.*”

According to information submitted in the Rajya Sabha by the Ministry of Home Affairs (MHA), “*there has been a nationwide increase in the number of deaths while under the custody of the police of over 60% over the past three years and 75% over the past two years. According to data from the National Human Rights Commission (NHRC) and the Union*

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<sup>31</sup> Campaign against torture, <http://uncat.org/wpcontent/uploads/2021/03/IndiaTortureReport2020.pdf> (last visited 23 July, 2024).

<sup>32</sup> INDIA CONST. art 21

<sup>33</sup> Dilip K. Basu v. State of W.B., (1997) 6 SCC 642

<sup>34</sup> Muralidhar, S. (2022) ‘Appearing in court in India: Challenges in representing the marginalised’, *CASTE / A Global Journal on Social Exclusion*, 3(2), pp. 421–441, 426.

<sup>35</sup> Admin, ¶ 39a (2023) *Criminal law bills 2023 decoded #15: Custody of arrested persons during investigation, P39A Criminal Law Blog*. Available at: [https://p39ablog.com/2023/11/criminal-law-bills-2023-decoded-15-custody-of-arrested-persons-during-investigation/#\\_ftn15](https://p39ablog.com/2023/11/criminal-law-bills-2023-decoded-15-custody-of-arrested-persons-during-investigation/#_ftn15) (last visited 23 July, 2024).

<sup>36</sup> Indian Evidence Act, §27, No. 1 of 1872, Act of Parliament (India).

<sup>37</sup> Nathu v. State Of Uttar Pradesh, AIR 1956 SC 56

*Ministry of Home Affairs, Gujarat has topped the list of Indian states with the highest number of custodial deaths during the past five years. According to the official data, Gujarat reported 80 incarceration fatalities during this time, with the numbers rising yearly. Only in 2021–2022 did the state record 24 deaths while in custody.”*<sup>38</sup>

During the period from April 2022 to December 2022, NHRC India dealt with 236 cases of deaths in police custody.<sup>39</sup> Earlier in 2017 also, the Death Penalty Report (DPR) had painted a grim scenario of the prevailing circumstances, there were 1575 deaths in police custody between 2001-2016 with 74 in the year 2017. 74 out of the death row convicts, said they made confessions due to torture.<sup>40</sup> Thus, justifying the judicial hesitancy as well as the reason for the limit of 15 days of police custody in CRPC.

### **C. *The Psychological Toll of Police Custody on detained persons***

*“When any person is kept in police custody, various factors contribute to the agony faced by the arrested person which includes disconnect from the family & society, loss of autonomy, lack of purpose, boredom, and uncertainty of surroundings.”*<sup>41</sup> This psychological effect often goes unrecognized and doesn’t receive the attention that it deserves.

The most significant factor affecting any person psychologically in police custody is the unpredictability of the lockups. An arrested person is under constant threat of physical harassment by the police authorities which causes stress. This also exacerbates the existing mental health disorders or leads to the development of “*post-traumatic stress*”<sup>42</sup> symptoms like anxiety, depression, avoidance, hypersensitivity, hypervigilance, suicidality, flashbacks, and difficulty with emotional regulation.

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<sup>38</sup> CJP- Citizens for Justice and Peace, <https://cjp.org.in>, Death in Chains: Indian Courts award reparation for deaths in custody, deaths rise alarmingly | CJP (last visited 23 July, 2024)

<sup>39</sup> *Ministry of Home Affairs*, [https://www.mha.gov.in/sites/default/files/AnnualReportEngLish\\_11102023.pdf](https://www.mha.gov.in/sites/default/files/AnnualReportEngLish_11102023.pdf) (last visited 23 July, 2024).

<sup>40</sup> *India Today*, *Forcing confession by torture rampant in country, first of its kind report reveals* (2017), <https://www.indiatoday.in/mail-today/story/torture-confession-accused-police-judiciary-1104081-2017-12-09> (last visited 27 July, 2024).

<sup>41</sup> *Mental health and prisons - prison policy initiative*, [https://static.prisonpolicy.org/scans/mh\\_in\\_prison.pdf](https://static.prisonpolicy.org/scans/mh_in_prison.pdf) (last visited 27 July, 2024).

<sup>42</sup> National Library of Medicine, *Exhibit 1.3-4DSM-5 Diagnostic Criteria for PTSD*, [https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1\\_ch3.box16/](https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3.box16/) (last visited 27 July, 2024).

“Due to the lack of training, police officers are not sensitized to the health issues of the persons in custody. Moreover, there is a lack of facilities and proper records of medical history for any medical intervention in lockups unlike jails which have proper guidelines and staff for looking into these aspects and this information relating to medical records can be crucial for preventing deaths in custody.”<sup>43</sup> Therefore, the atrocities or harms faced by the detained persons for prolonged duration in custody can have a very deleterious effect on the mental well-being and the physical health of the accused persons.

### **XIII. THE FUTURE OUTLOOK: IS INCREASING THE DURATION OF CUSTODY AN ANSWER?**

The ease and simplification in the process of investigation are often argued as the prime reason for increasing the time duration of police custody. But the “*Suraksha*” aspect of this also can’t be sidelined, the plausible dangers that might arise for a person in prolonged police custody are a matter of concern for the legal systems worldwide. A middle road has to be mended to resolve this problem. The challenges that investigative agencies face during an investigation can not be sufficient to show the reason behind increasing the duration of custody for such an extensive period.

One of the plausible solutions can be to amend Sec 187(3), for instance, the police custody period could be made flexible. The duration of custody for more than 15 days should only be allowed for non-cognizable offenses and that too for up to 40 days in total, whereas for cognizable offenses, it can be up to 60 days in total. The duration can be such that it can be in parts for 4-5 days but within the limit of 15 days.

This will help the police in the investigation and would not put the accused in a vulnerable position due to a prolonged period of police custody, which was also pointed out by the Supreme Court recently in the case of *CBI v. Anupam J. Kulkarni*<sup>44</sup>

Moreover, the magistrate should adhere to proper guidelines for issuing orders such as:

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<sup>43</sup> Adam D. Vaughan (2017), “*In custody deaths of men related to mental illness and substance use: A cross-sectional analysis of administrative records in Ontario, Canada, Journal of Forensic and Legal Medicine*”, <https://www.sciencedirect.com/science/article/abs/pii/S1752928X17300240> (last visited 27 July, 2024).

<sup>44</sup> *CBI v. Anupam J. Kulkarni*, 1992 SCR (3) 158.

- i. The order given by the Magistrate shall explicitly specify the “*exceptional circumstances*” involved to extend the police custody beyond the said period of 15 days.
- ii. There should be a sound application of the judicial mind.
- iii. A list can exist denoting offenses where the extension in section 187(3) applies. Notified crimes should rationally warrant over 15 days based on their gravity or nature. For example, mob lynching under certain laws may necessitate extensive investigation. Section 187(3) could then apply solely to that section or comparable crimes.

With growing technology and digital advancements, Chief Justice DY Chandrachud himself noted “*The need to involve evolving technologies in the administration of justice is the need of the hour, we must look at the different alternatives available to us to avoid police custody.*”<sup>45</sup> The primary reason Police want custody is to investigate the arrested individuals for their investigations. However, magistrates are rightfully wary of allowing custody due to threats of harm or death in detention. The biggest reason that worries human rights activists and magistrates is the “*threat to the safety and security*” of such arrested persons from custodial torture, violence, and deaths in custody.

#### XIV. CONCLUSION AND SUGGESTIONS

The new provisions associated with the increase in the duration of police custody beyond 15 days have created uncertainties for the accused rights and their physical/social/mental well-being. Globally, the pre-trial detention shows generally brief periods of police custody to minimize violation of fundamental rights. Therefore, the inclusion of appropriate guidelines is needed to monitor the use of extensive periods of custody. It is imperative to ensure the prudent use of such provision. If not correctly monitored, this could lead to the misuse of power by the investigative agencies and pose a threat to those who might get caught in it. Adequate use of

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<sup>45</sup> Ridhi (2023), ‘*Need to adopt innovative and technological solutions with the ever changing, Dynamic World*’: CJI Chandrachud, SCC Blog, <https://www.sconline.com/blog/post/2023/02/06/need-to-adopt-innovative-and-technological-solutions-with-ever-changing-dynamic-world-cji-chandrachud-legal-news-legal-research->

technology is also needed to balance the investigative needs, i.e., to ease the investigation process for more efficient redressal of cases and for protecting the rights of the accused persons.

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