

The role of the judiciary with relation to custodial death in India

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ABSTRACT: For a democratic state India has to take care of all of its citizens. The Government of India has to protect the dignity and security of every citizen. However, there are some certain citizens which are deprived of rights and dignity and are called custodial prisoners. Custody denotes care or guardianship. Sometimes death occurs in police custody due to torture and is not uncommon to Indian society and is always rise question on peoples trust on Law enforcement force. Torture in custody violates the basic human rights guaranteed by the constitution of India. The constitution of India guarantees several rights under Article 20, 21, and 22 of the constitution to the 'prisoners' and 'persons in Custody'. Rights such as 'Rights against Inhuman Treatment by Police', 'Rights against handcuffing', Right to fair and speedy trial', Right to free legal aid', are interpreted as an integral part of Article 21 by the Supreme court of India. This study covers the judicial initiative taken by the Apex court and National Human Rights Commission to prevent the unfortunate custodial torture and death and police reforms. The reform process of the police system in India begins in late 1960 and still progress.

I. INTRODUCTION:

Incidents of Torture often catch the Headline of News Paper. That's created a bad impression of the police force. It is obvious that in those cases only a few portions are involved. Although the police manuals strictly prohibiting abuse of power but due to difficulty to established the charge Police dares to use excessive power during interrogation of a suspected person.

Custody in legal means when the accused person's freedom of movement is denied by law enforcement officials. Custodial death means death occurring in custody during custodial detention by law enforcement agencies.

What is custodial death?

There are various definition of custodial death, one of them is "Instances have come to the notice where the Police has arrested a person without a warrant in connection with the investigation offense without recording the arrest, an arrested person has been subjected to torture to extract information for the investigation, under such circumstances injury caused on the body of the arrestee has sometimes resulted to his death, - a custodial death"¹. In simple language death arising under police custody or judicial custody of a person.

The Police Custody and Judicial Custody

Police Custody: After receipt of a report of a crime a police officer immediately arrests the suspected person to prevent him from committing the further crime and taking him to the police station to keep him in lockup is called police custody.

Judicial custody: Judicial custody means when the suspect person is arrested by police and presented before the magistrate and keep in jail by the order of the magistrate then it is called judicial custody.²

Reasons for custodial death:

There are several reasons for custodial deaths. Those are

1. Negligence by police

¹ I.B. Thockom and R.S.Verma, "Law relating to Custodial Death and Human Rights", 1st Ed., 1999, p.3.

²<https://districts.ecourts.gov.in/sites/default/files/fct.pdf>

2. Physical torture or misconduct by investigating agency during interrogation
3. Unlawful detention by police
4. Suicide

The law commission has observed that the majority of the victim of custodial torture are poor and weaker sections of the community.³

In the majority of cases, the poor and weaker section of people can't protest even if any injustice happened to them.

Generally, police arrested and kept the accused person in custody until they get any confession from the accused person. In that period, the police officer tried all possible methods and techniques to the accused to confess guilty.⁴

Difference between an Encounter and the Custodial death

Custodial death is when the suspected person is died because of the torture and inhuman treatment by a police officer during the time of interrogation. Whereas in Encounter the police officer kills the suspected person and takes a plea of self-defense which is available to everyone under IPC 96 to 106.

The constitutional safeguard and Rights of prisoners

Article 21 of the Indian constitution provided the right to life and personal liberty. The 44th Amendment of the Indian constitution declares Article 20 and 21 as non- decodable even in an emergency period. Article 21 provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law.⁵ Right to life and personal liberty means the right to live with human dignity and it includes a guarantee against torture and assaults by state force. And under Article 32 and 226 any person victim of any inhuman treatment can move to Supreme Court and high court for remedies.

³A.K.Saxena, P.S.V. Prasad and Sankar Sen, "Custodial Deaths in India (A Research Study)", 1st Ed., 1994, p.

⁴Vadackumchery J, "Custodial Violence and Death: Problems and Prevention", Paper presented in the Symposium of Indian Society of Victimology, Chennai, 1994

⁵The Constitution of India

Right to bail

Bail is a right to an under-trial prisoner. Detention of him in jail for an unspecified period violates Article 21 of the Constitution.

Article 21 of the Indian constitution 1950, Protection of life and personal liberty:- No person shall be deprived of his life and personal liberty except according to the procedure established by law.⁶

Rights to free legal aid

The right to free legal aid is a fundamental right guaranteed by The Constitution of India under Article 39-A.

Under section 12 of the Legal Service Authorities Act 1987 provides every person shall be entitled to legal service if that person is a member of a scheduled cast or scheduled tribe, a victim of trafficking in human beings or beggar, a woman or a child, a person with a disability, a person under circumstances of undeserved want, an industrial workman, a person in custody or a juvenile home or a psychiatric, or a person in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government.

Right against solitary confinement

Solitary confinement is a form of imprisonment where the prisoner is restricted to move and contract with other prisoners or inmates. It is a violation of Article 21 of the constitution unless backing by the law.⁷

Right against handcuffing

The apex court has in Premankar vs Delhi Administration held that police should only handcuffing when there is a present danger of escape from the police control unless handcuffing is arbitrary and unreasonable.⁸

Right against inhuman treatment

The supreme court has declared 'third-degree method' is a clear violation of Article 21 of the constitution⁹.

⁶ Article 21 of the Indian constitution 1950, Protection of life and personal liberty:- No person shall be deprived

⁷ Sunil Batra (No.1) v. Delhi Administration, AIR 1980 SC 1535

⁸ AIR 1980 SC 1535

⁹ Kishore Singh vs. State of Rajasthan, AIR 1981 SC 625

Right to a speedy trial

Article 21 of the Constitution guarantees the 'Right to speedy trial' as a fundamental right.¹⁰

Right to a fair trial

Fair trial is the core of the criminal jurisprudence. It is necessary for every democratic state governed by the Rule of Law. A fair trial includes fair investigation and denial of it is a violation of human rights¹¹

Right to consult with a lawyer

The under-trial person in custody has the right to consult with the lawyer.¹²

Rights prescribed under Article 20 of the Constitution;

Right to protection against ex post facto law

No person shall be convicted of any offense except a violation of a 'law in force' at the time of the commission of the act charged as an offense.¹³ This means a person can't be convicted under a law passed after committed.

Right to protection against Double jeopardy

No person shall be prosecuted and punished twice for the same offense.¹⁴ And if a person is prosecuted again for the same offense he already prosecuted, then he can take complete defense.

Development of custodial jurisprudence

D.K. Basu Vs State of West Bangle¹⁵ the case first develops custodial jurisprudence. The victim died in Police lockup after the arrest. An NGO filed a petition under Article 32 of the constitution. In this landmark judgment, the Supreme court has given some guidelines which should be followed by arrest and detention. Those are as follows:

1. The police officer who carrying out the arrest or handling interrogation should be bear accurate, visible, and clear identification and name tags with their designation. The officer who handles interrogation must be recorded in the register.
2. The police officer at the time of arrest the arrestee must prepare a memo of arrest and should sign by one witness who may be either of his family member or a respectable person of the locality of the arrestee at the time of the arrest.
3. The time, spot of capture, and scene of the authority of an arrestee must be advised by the police where the following companion or relative of the arrestee lives outside the locale or town through the Legitimate Aid Organization in the District and the Police station of the territory concerned electronically inside a time of 8 to 12 hours after the capture.
4. The individual captured must be made mindful of his entitlement to have one educated regarding his capture or detainment when he is put nabbed or is kept.
5. An entry must be made in the dairy at the spot of confinement to capture the arrestee and the name and specifics of the police authorities in whose care the arrestee is.
6. The arrestee should be examined by a doctor every 48 hours during his detention time in police custody.
7. The arrestee at the time of his arrest must be examined by a doctor and a memo should be prepared and write all details of whether the arrestee is previously injured if so details of every major or minor injury. And the memo should be signed by both the arrestee and the police officer at the time of his arrest.

All the documents including memos of arrest should be sent to the magistrate for his record.

The arrestee may be permitted to meet his lawyer during the time of interrogation, though not throughout the investigation.

Police control room should be established at every district and state headquarters where the arresting police officer shall communicate regarding arrest and place of custody. And within 12 hours from the arrest, it should be displayed on the conspicuous board.

¹⁰HussainaraKhaton (No. 1) v Home Secretary, State of Bihar, AIR 1979 SC

Ratttiram vs State of M.P. Through Inspector of Police, AIR 2012 SC 1485

¹¹Ratttiram vs State of M.P. Through Inspector of Police, AIR 2012 SC 1485

¹² Article 20(1), The constitution of India, 1950

¹³ Chief Inspector of Mines vs K.C. thapper, AIR 1961 SC 883

¹⁴ Article 20(1), The constitution of India, 1950

¹⁵D.K. Basu Versus State of West Bengal (1997 (1) SCC 416

Compensation under Article 32 and 226 of the constitution

The Supreme Court in Nilabati Behera vs the State of Orissa¹⁶ pointed out that claims under the public law for compensation for human rights violations and fundamental freedoms, the protections enshrined in the Constitution. The state is responsible to provide remedies to the heir of custodial death victim caused by state action for infringement of Article 21.

The recent incident of custodial violence

Joyanta Bora of Jorhat, Assam¹⁷ pick up by Army and Police join the team on 15th June 2020 midnight from his home and forcibly taken away, claimed to have linked with ULFA Independent a local rebellion group. On the same night, Jayanta Bora died in Police custody. The next day police return Jayanta Bora's dead body with a foaming mouth.

On June 19 of 2020 during the COVID 19 pandemic P Jeyraj and his son Fennix¹⁸ was detained by police without a warrant for opening a shop beyond the authorized time. They were granted police custody by the magistrate due to COVID 19 outbreak. The next day both had died in hospital due to bleeding and alleged lockup torture.

Some leading cases of custodial death

Nilabati Behera vs State of Orissa¹⁹

In this case, the petitioner son Suman Behera died in Police custody. Suman Behera died in police custody. Suman Behera was taken by police in connection to investigation of a theft. Later his dead body was found in a railway track. The victim mother Nilabati Behera write a letter to the supreme court and was treated as write petition. The court held that Article 21 of the Constitution is violated in this case. The

¹⁶ AIR 1993 SC 1960

¹⁷ The Custodial Death of Jayanta Borah and the Silence of the National Media, 2 July 2020, <https://www.groundxero.in/2020/07/02/the-custodial-death-of-jayanta-borah-and-the-silence-of-the-national-media/>

¹⁸ Arun Janardhanan, September 24 2020, explained: How Tamil Nadu Police brutal act of revenge claimed lives of father and son, <https://indianexpress.com/article/explained/explained-tamil-nadu-police-custodial-torture-father-son-killed-thoothukudi-6479190/>

¹⁹ (1993) 2 SCC 416

fundamental rights of a detainee under Article 21 are only restricted permitted by law and is not prohibited by law. It is duty of the jail authority and the police to ensure of protection of Rights to Life under their custody. The supreme court held State vicariously liable to repair damages, the deceased mother was awarded one lakh fifty thousand rupees by the court.

Joginder Kumar v. State of U.P. and others²⁰

At the time of arrest, the police officer has to inform the arrested person why he is arrested. These rights are inherited from Articles 21 and 22(1) of the constitution. The magistrate also has to satisfy himself.

J. Prabhavathamma v/s The State of Kerala & Others²¹

In this case, a metal shop worker has died in police custody in Thiruvanthapuram. The special CBI court found guilty two police officers for murder the victim in custody and awarded the death penalty. Court had said it was brutal and dastardly and this kind of action affects the faith of the people towards the police institution.

Munshi Singh Gautam v State of Madhya Pradesh²²

In this case, the supreme court concern about the problem of custodial torture and stated that the rising of torture, assault, and death in custody raises serious questions about the credibility of the rule of law and criminal justice system.

Efforts of National Human Rights Commission

After its establishment, curbing custodial abuse has been a key goal of the Commission. It must be recalled, however, that as early as 14 December 1993 the Commission issued instructions that it should be told within 24 hours of the occurrence of any incident of custodial death or rape; it was added that failure to report promptly would lead to the assumption that an attempt was made to conceal the incident. It was stated in the following instructions that information on custodial deaths should be followed by a post-mortem report, a video report on the post-mortem examination, an

²⁰ 1994 AIR 1349; 1994 SCC (4) 260

²¹ WP(C). NO. 24258 OF 2007 (K) AND CRL. R.P.2902 OF 2007

²² Appeal (Crl.) 919 of 1999

inquiry report, a magisterial investigation report, and to avoid delays in the scrutiny of such cases, the Commission issued in December 2001 additional guidelines calling on States to submit the required reports within two months of the incidents; it was stressed, inter alia, that the post mortem report should be submitted by a new format developed by the Commission.²³

Death in custody of former Sarpanch of Gogon Village, Chuhur Singh due to negligence: Punjab²⁴

In the instant case, the Commission took suo moto cognizance from a newspaper report published in the Tribune regarding the death of Chuhur Singh, a former Gogon Village Sarpanch, while in police custody. The victim was reportedly detained in a smuggling case for poppy-husk and died while in detention at the hospital.

The District Magistrate, Hoshiarpur, has submitted a report in response to the Commission's request. In the Mahilpur Police Station report, it charged for negligence. It was mentioned in the report that he had behaved against the doctor's advice on emergency duty, and had taken the deceased to trial, thus aggravating his condition. Thus a departmental investigation against the Assistant Sub-Inspector had been launched. However, the report refuted any torture or beating by the Mahilpur Police, as alleged by the deceased's family.

Because of this finding of negligence in providing timely medical assistance, the Commission provided within four weeks notice to the Chief Secretary, Government of Punjab as to why Rs. 50,000/- should not be charged as an immediate interim relief under Section 18(3) of the Act to the next of the deceased's kin.

2. Death of Surendra in Police Custody, Kerala²⁵

On 19 December 1996, the Commission received a petition from the Christian Cultural

Forum alleging custodial death due to torture of Shri Surendran, a Kazhakkottam resident, Kerala, in police custody in Kazhakkootam. The victim was taken into custody the day before but was not brought, as necessary, before the Magistrate within 24 hours. The Christian Cultural Forum called on the Commission to take steps against the culprit service officers.

The Commission ordered the Kerala Government to pay an amount of Rs. 3,00,000/ to the next of the deceased's kin. It also mentioned that the State CID would investigate in this respect with consideration of charging the suicidal police staff and, besides, effective disciplinary measures should be taken against the death police staff.

Death of Karan Singh in police custody due to violence: Madhya Pradesh²⁶

The Commission received a letter from the Magistrate of the Collector and District, Morena, Madhya Pradesh, claiming that police personnel from the Ambah Police Station had carried out a raid and arrested people involved in gambling based on the information received. It has also been mentioned that one of them was admitted to Karan Singh, who was in an intoxicated state, at the Ambah Hospital in the Morena district where he had expired.

Upon notification of his death to the Home Secretary, Government of Madhya Pradesh, Sub-Divisional Magistrate, Ambah sent a copy of the Magisterial Investigation Report stating that Karan Singh had died in the custody of Ambah Police Station as a result of custodial violence and that the Assistant Sub-Inspector and Head Constable were responsible for his death.

The Commission called for a report on the legal and departmental action taken against delinquent police officers who had been held responsible for Karan Singh's death and also provided notice to the Madhya Pradesh Government as to why immediate interim relief according to Section 18(3) of the Act is not available. The Home Department, Government of Madhya Pradesh, submitted a report which indicated that based on a case under Section 304 and 34 IPC read with 3 (2) 5 Scheduled Tribes (Prevention of Atrocities) Act. The accused was arrested, presented in court, and a charge-sheet had

²³Annual Report of National Human Right Commission for the year 2002-2003, pp. 54, 55

²⁴Case No. 431/19/2000-2001, Annual Report of National Human Right Commission for the year 2002-2003, pp. 172

²⁵Case No. 13353/96-97/NHRC), National Human Rights Commission, Annual Report 2002-03, pp. 175-76

²⁶Case No. 1935/12/2000-2001-CD), National Human Rights Commission, Annual Report 2002-03, pp. 174-75

been issued, and interim relief of Rs.1,50,000/- was paid in next kin. Rs. 50,000/- 's balance would be deposited at court upon the conclusion of the trial. In the light of the action taken by the State Government, the Commission decided to close the case.

II. CONCLUSIONS AND SUGGESTIONS

The violence in custody is considered among the worst crimes in any civilized society. It is a blatant violation of human dignity. It strikes at the very roots of rule and law. Violence in custody and abuse of power are not only peculiar to India but also the rest of the world. It has been the international community's concern as the issue is not just a regional issue but is universal and the challenge is almost global. Third-degree torture and deaths in custody, rape, molestation, etc. have become an intrinsic part of police investigations, and sometimes the injury inflicted on the inmates is unbearable.

There is a needs to take this matter seriously and take some measures to improve the situation.

The superior officers should be supervised continuously to lower officer superiors to prevent custodial violence and adherence to lawful standard investigative methods.

1. The police officers should be trained with a systematic method of interrogation.
2. The police system should be free from political pressure.
3. There should be a medical facility inside the jail for emergency cases.
4. There are needs for a special provision in IPC for custodial death as murder.