

CUSTODIAL DEATHS: LEGAL PERSPECTIVE

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Abstract

Custodial deaths are considered as a blot on the working of the administration and the criminal justice system which is governed by Rule of law and also questions the idea of democracy in a welfare state. In the past years, custodial deaths have attracted large attention of the public, legislative bodies, media houses, judiciary and even the National Human Rights Commission. Due to growth of digital platforms, widespread coverage, judicial activism, initiatives have been taken by the National Human Rights and Civil servants to inquire and tackle this lacuna of torture and guarantee basic human rights to everyone.

Introduction

The Indian Constitution has bestowed upon its citizen some fundamental rights. These fundamental rights ensure certain basic rights and liberties to the citizens without discrimination. The prisoners or the accused in the custody are similarly entitled to some of these fundamental rights. The Universal Declaration of Human Rights, 1948 envisages that it is the obligation and responsibility of each and every welfare state to protect these rights of the citizens.

Custodial deaths has been heavily criticized by the citizenry and shaken their belief in democracy. It has been marked as on the most brutal crimes in a democratic society which is governed by the Rule of law. It makes one question that does an individual abridge his fundamental right to life, moment he gets into custody of a policeman? The answer is for sure a big 'NO'. In India where fundamental right to life and liberty is paramount and Rule of law acts as guiding force in every action and inaction of the administration, cases of barbaric treatment and third degree treatment by the policemen question the working of entire administrative machinery.

Background –

The governance in the older times used to revolve around the concept of dharma (law) and danda (punishment). The 'dandaniti' was an integral part of the administrative working to

maintain the social order and check the crime rate in the society. The traces of policing could easily be spotted in the two great epics – Ramayana and Mahabharata. The ancient lawmaker, Manu, in this Code did mention about the Police. He further categorized them into two departments on the basis of the functions performed – the criminal investigation department and the law and order department.

Kautilya's Arthashastra also mentions about various kinds of torture such as burning of limbs, tearing by wild animals, trampling to death by elephants and bulls, cutting of limbs and mutilation etc. The Police system has existed since time immemorial and going in the portals of history, it can be seen that criminals and prisoners were always tortured. Custodial violence has been always practiced in India. No matter which time period one chooses, be it Mughal period, Gupta period or Mauryan period prisoners and criminals were always subjected to barbaric and torturous treatment. With time the treatment given to them instead of improving kept on deteriorating.

Custodial Violence –

Custodial violence can be defined as the violence faced by the accused in police custody and judicial custody. Death is the most used form of violence followed by rape and torture. This is mostly done by the policemen to extract confession from the accused. These deaths and tortures have peaked recently and new methods of violence have also emerged defying the laws established and the fundamental rights.

The police have been given power to use counter force to incapacitate the criminals in the process of protecting the innocent civilian. This power has been many a times been misunderstood by the policemen and has caused abuse of power and unethical conduct on their part to show their dominance over the public. Cases of barbarism, extortion and other crimes committed by the police force have proliferated in the recent times in different parts of the country. There are several proofs and evidences to highlight this deviance in India. This quick approach on the part of the police, ultimately fails the idea behind the establishment of this pillar which was bestowed with power and responsibility to maintain order in society by the people themselves. This pillar of democracy was clearly meant to support and protect

social order and justice in the society. The Supreme Court observed in *DK Basu v. State of Bengal*¹-

“Custodial Violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that, the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of the uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society.”

Custodial death –

The barbaric and torturous treatment not only ended up in third degree treatment, but also in custodial deaths and rapes. Due to increase in number of custodial rape cases, a series of amendments were brought in Criminal Procedure Code and Indian Evidence Act. This is no doubt the worst form to punish anyone to death in police custody. Rule 48 of the Madras Prison Rules under the Prisons Act makes it obligatory for the police to ensure the safety of prisoner while in police custody.

These custodial deaths have been further classified into natural death and unnatural death. In the scenario of natural death, Section 176 of the CrPC lays the provision that the SDM has the right to conduct a magisterial investigation and no compensation is awarded to the family of the prisoner. Few states like Tamil Nadu and Andhra Pradesh stand as exception as they still provide a compensation of Rs. 20,000. In case of unnatural death, the judicial magistrate under Section 176 of CrPC has been given the right to conduct magisterial inquiry and also provide compensation to the prisoner. The SC/STs are provided higher compensation as compared to others in case of custodial death. These unnatural deaths are further classified into four sub-sections – suicide (309 IPC), accidental death (304A IPC), murder (302 IPC) and medical negligence (304 IPC).

Provisions in Constitution related to criminals –

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¹ *DK Basu v. State of Bengal* (1991) 1 SCC 416

The Indian Constitution provides various fundamental rights to not just only its citizens but also to aliens. Article 14 confers right of equal protection of laws, Article 21 ensures all right to life and personal liberty and Article 20 (3) gives right against testimonial compulsion, all these rights resultantly ensure the prisoners and criminals a right to dignified life. The Supreme Court, guardian of fundamental right, time over and again has interpreted and broadens the ambit of fundamental rights. In the landmark case of *Maneka Gandhi*², the Supreme Court decided that Article 21 requires not only the 'Law' but also the procedure laid down by the law should be fair, just and reasonable. In other landmark judgments the courts have held against solitary confinement³, chaining the accused⁴, inhuman treatment and torture⁵ and infliction of death sentence except in rarest of rare case⁶. Justice Krishna Iyer once aptly said that "fundamental rights do not stop at the prison gates".

Fundamental provisions under Criminal Jurisprudence –

The fundamental provisions under criminal jurisprudence are all scattered. They haven't been arranged in a systematic format in any statute or Act. But after much analysis, it has been observed that the accused shall be presumed to be innocent until his guilt is proven in the court of law⁷. The burden of proof is on the prosecution to prove the guilt of the accused and not on the accused to prove his innocence⁸. The provision is obligated to prove his case "beyond all reasonable doubt". In case of any doubt in pertinence to prosecution case, the benefit of doubt goes to the accused and he should be acquitted. While the onus of proving any general or special exception in his favor is on he accused, he has to satisfy the test of preponderance of probabilities only and not the rigorous test of proof beyond all reasonable doubt. It is also observed that no innocent should be punished even if results in nine criminals go unpunished.

Statutory safeguards –

- Indian Evidence Act, 1872 –

² *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

³ *Sunil Batra v. Delhi Administration*, AIR 1978 SC 1575

⁴ *Charles Shobhraj Case*

⁵ *Sunil Batra case (No.2)* AIR 1978 SC 1579

⁶ *Bachan Singh v. State of Punjab*, AIR 1980 SC 898

⁷ Article 11 of Universal Declaration of Human Rights, 1948

⁸ *Woomington v. Director of Public Prosecution*, 1935 AC 462

Section 25 and 24 of the Indian Evidence Act lays the provision that confession in from of a police officer cannot be treated as evidence and any threat by an authority in order to obtain confession would be considered irrelevant in criminal proceedings respectively.

- Code of Criminal Procedure Code, 1973 –
 - a) Section 46 and 49 guards those criminals from torture and other barbaric treatment who are not accused of an offence punishable with death or imprisonment for life and also during escape.
 - b) Section 54 of the code exclusively deals with any infliction of custodial death and torture.
 - c) Section 176 asks for a compulsory enquiry by a judicial magistrate in case of death of an accused in the police custody.

- Indian Police Act –

Section 7 and 29 of the following act lays the provision for dismissal, penalty or suspension of penalty or suspension of police officers who unethically discharge their duties or are unfit to perform their duties. This prevents the police officers from violating the various constitutional and statutory provisions.

- Indian Penal Code, 1860 –
 - a) Section 330, 331, 342 and 348 of the IPC are especially designed to stop a police officer from using third degree treatment of torture.
 - b) The famous Mathura rape case⁹ brought significant changes in the criminal justice system and amending Section 375 of IPC. Section 376 (1) punishes custodial rape committed by police officers.

Landmark cases –

- D.K. Basu v. State of Bengal¹⁰-

In this case, Mr. D.K. Basu the executive Chairman of Legal Aid Services, which is a non-political organization, registered under the Societies Registration Act, wrote a letter to the

⁹ Mathura Rape case (1979) 2 SCC 143

¹⁰ D.K. Basu v. State of Bengal (1997 (1) SCC 416)

Chief Justice of India, to raise concern over the matter of recent deaths and violence which were being reported in the police custody and lockups. In the letter, it was mentioned that the crime reported goes unpunished despite many efforts made and also the courts needs to analyze and issue rose so that the family members of the victim are given some compensation in acquaintance of their suffering. The letter was treated as a writ petition when it was filed before the Supreme Court of India. Shri Ashok Kumar Johri addressed the letter to the Chief Justice of India by highlighting the death of a person named Mahesh Bihari of Aligarh in Police custody. In this case, petitioners also raised concerns over the police powers and that compensation should be given to people if there is any infringement of their rights mentioned in the Article 21 and 22 of the Constitution. The defendant that is the State of Bengal said that the writ petition was misconceived, inappropriate and misleading in law and thus denied the allegations which were put against them.

In this case, 11 guidelines adhering to Article 21 and 22 (1) were prescribed by the court which needs to be strictly followed. Details of all personnel handling the interrogations of the arrested person must be recorded in a register. A memorandum of arrest at the time of the arrest should be prepared. It must also be signed by the detainee and must contain the date and time of the arrest. Police must notify a detainee's time, place of detention, and place of custody. A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of the custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and should be displayed on the notice board of police control room.

The arrestee must be permitted to meet his lawyer during the interrogation but not throughout the whole interrogation. Copies of all the documents including the memo of arrest should be sent to Magistrate for record.

- State of U.P v. Ram Sagar Yadav¹¹ -

In the following case, a farmer falsely accused of cattle trespass by his neighbor over a dispute, was allegedly threatened for bribes by the concerned police officer, who then, at first, relented but then reported this incident to the police station which as a response appointed another officer to inquire into the farmer's allegation against the officer. The police officer in

¹¹ State of U.P v. Ram Sagar Yadav, AIR 1985 S.C. 416

charge of the enquiry arrested the farmer and tortured him severely, within 6 hours of the registering of the initial case the farmer then succumbed to his injuries and died. This matter was then taken up by the Apex court which then acknowledged the advent of custodial death and torture as well as the indemnity enjoyed by police officials, saying,

“Police officers alone and none else can give evidence regarding the circumstances in which a person in their custody comes to receive injuries. Bound by the ties of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth.”

- Yashwant And Others v. State of Maharashtra¹²–

The Supreme Court on September 4 upheld the conviction of nine Maharashtra cops in connection with a 1993 custodial death case and extended their jail terms from three to seven years each. Reportedly, a bench of Justice NV Ramana and MM Shanatanagoudar upheld the order and said that incidents which involve the police tend to erode people’s confidence in the criminal justice system. While enhancing the prison term of the cops, the apex court said, “With great power comes greater responsibility.” The Police personnel were found guilty under Section 330 of the Indian Penal Code which involved voluntarily causing hurt to extort confession or to compel restoration of property.

Conclusion –

Custodial deaths have proliferated over the years. It is high time that the powers bestowed upon the authorities should be checked because these powers have been abused time over and again. The laws need to be synchronized and properly arranged. The existing laws are all scattered and because of that justice gets delayed and the policeman who abuses his powers doesn’t get easily punished.

There is an immediate need of structural reforms in the existing working machinery, policemen need to be trained to behave in a civilized fashion. What is the point of having policemen if the citizenry doesn’t feel safe in their presence? It is really surprising that the world’s largest democracy experiences a situation where the guardians of public peace and harmony end up violating and murdering the live of the people.

¹² Yashwant And Others v. State of Maharashtra (2018) 4MLJ (CrI)10(SC)



INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

Implementation of Law Commission of India's 273rd report which suggested that those accused of committing custodial torture bet it policemen, military and paramilitary personnel should be criminally prosecuting instead of facing mere administrative action establishing an effective deterrent.

