

CUSTODIAL DEATH IN INDIA

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ABSTRACT: *One of the worst crimes in a civilized society governed by the Rule of Law is custodial death. It raises the question that, does a citizen, when a policeman arrests him, lose his fundamental right to life? Can a citizen's right to life be put in abeyance upon his arrest? Indeed, the answer has to be an emphatic 'No.' In India, where the rule of law is implicit in any action and the right to life and liberty is regarded as the fundamental right that adorns the highest position among all essential fundamental rights, torture instances and the use of third-degree tactics on suspects during unlawful detention and police detention throws a slur on the administration system itself. Custodial torture is widely recognized as one of the most barbaric types of violations of human rights. It is banned by the Constitution of India, the Supreme Court, the National Commission of Human Rights (NHRC) and the United Nations. But these institutions are being defied by the police across the country. Therefore, using a pragmatic approach, there is a need to strike a balance between individual human rights and public interests in fighting crime.*

KEYWORDS: *Arrest; Custodial death; Fundamental rights; Illegal detention and Rule of law.*

INTRODUCTION

For a long time, torture and police brutality in detention have been a major concern. The number of such events in many parts of the world and India has risen over the years. It is a fact that police turn to third-degree tactics for the accused to extract confessions and statements. These techniques also result in significant injury and even death. It is also a fact that victims are forced to commit suicide without being able to endure such torture and humiliation.

Following the horrific murder of George Floyd in the United States and the custodial deaths of Jayaraj and Benix in Tamil Nadu, India, there has been widespread outrage over the problem and demands for police reforms and effective mechanisms to hold the guilty officers responsible for their misdeeds. In order to fix this issue, we have certain remedies at the IPC. From time to time, the Supreme Court has also issued directives and instructions to the Union and State Governments to take the matter seriously, to implement the means by which custodial death incidents are brought to an end, and to punish deceased officials[1]. But, as is evident from the growing numbers of custodial deaths in the world, these have not produced fruit. Interestingly, there is no anti-torture legislation in India and this issue is now being fiercely debated again. Many believe this is the need for the hour now.

CUSTODIAL DEATH

Custodial death is the cause of the death of a person who, on being convicted or under trial, has been confined by the police. They can be organized into three general classes: death in police care, death in legal detention, and death in the protection/paramilitary forces jurisdiction. In Indian culture, the concept of custodial death is not new[2].

For the Indian culture, the idea of custodial death is not new. People have been dying in police custody during inquiries since British rule. Over and over again, India has seen the basic fundamental rights of the shattered prisoners and the use of violence and torture to make a positive point. During investigations, the police administration is often blamed for custodial deaths, torture, and the use of illegal means. The word 'death in custody' is classified by Wikipedia as 'death of a person in the custody of the police, prison service or other authorities. Its legal validity is a divisive topic to date and is still questioned as this incarceration barbarity has been validated by the common retributive-deterrent ideology. While the authorities are legally bound by a healthy setting, which requires timely medical assistance, to provide sufficient essential amenities and ensure the welfare of the prisoners, the actual scenario varies from what the legal implications imply[3]. It is also shown that this cruelty in prison is often faced by people belonging to deprived parts of society or those from the depressed castes.

Reasons and Perspective

In its recently released report, the Asian Centre for Human Rights (ACHR) reported that there were a total of 1,674 custodial deaths, including 1,530 in judicial custody, and 144 deaths in police custody in India. A significant matter of concern in society is this troubling rise in custodial deaths. Custodial death is commonly defined as the death of a person who is arrested as a suspicion by the police for his involvement in the crime or being under trial. The state of U.P. has the worst and reported the highest number of casualties in police custody. A legal right has been provided to the police to use fair force to retrieve data from hardened criminals. It is a well-known fact that when interrogating the accused, police officers use force[4].

Death in police custody is a "black spot" for the whole force, since they have no right to take the law into their own hands and cause the accused to die. One of the key reasons behind custodial death is that police officers attempt to obtain the testimony of the accused immediately by using force due to the influence of influential figures and politicians. When the accused denies admitting his guilt, they use force. It is also seen that police forces not only use force on hardened criminals, but also cause people who do not have prior criminal records to die. As many as 100 cases of custodial deaths have been reported in Maharashtra, according to a study published by the NCRB. Of these, 58 persons were not still on remand and were not brought before the Judge. It is a major cause of concern because in a democratic country like India, people are killed without having any access to justice[5].

It is observed that one of the most recorded cases of custodial deaths in India is also "suicide." In India, suicide cases in police custody rose by 9 percent in 2018, as per the NCRB. The state of Andhra Pradesh reported 27 suicide-related deaths, followed by Maharashtra and Gujarat. In custodial cases, mortality during the care and death of the accused due to illness is often observed as a secondary cause for the accused's death. The death of the accused is caused by police officers in custody being attacked. Some other important causes are traffic collisions, including investigation-related journeys, deaths caused while fleeing from custody, and injuries suffered prior to custody.

Constitutional and Human Rights perspective

Trust in democracy and the rule of law has been shaken by a growing number of cases of custodial deaths in the world's largest democracy. Jerome H. Skolnick asked the police authorities some questions about the protection of the rule of law and democracy in the country. To what end do the police exist? What ideals in a democratic country are protected by the police? Will the police be mainly a social control body with its primary value in the successful enforcement of the prohibitive standards of substantive criminal law? It is given by the "salus populi est suprema lex" principle (the safety of the people is the supreme law). In numerous cases, the court has correctly noted that every person has a right to seek justice with rational and equal means, and the rule must be against an accused's solitary confinement. There must also be no undue delays in both the investigation and prosecution proceedings[6].

Landmark judgements on custodial death

- (I) *Joginder Kumar v. State Of U.P and Others*[7]: Rights are intrinsic in Articles 21 and 22(1) of the Constitution and require acknowledgment and careful protection of those rights. The Court also laid down certain guidelines in order to enforce fundamental rights. It can be summarized as follows: the police officer shall, when he is brought to the police station, notify the arrested person of this right. An entry is required in the journal as to who was told of the arrest. These power rights must be kept to flow from Articles 21 and 22(1) and strictly enforced. It was further directed that it is the responsibility of the magistrate before whom the person arrested is produced to satisfy himself that those requirements have been fulfilled.
- (II) *J. Prabhavathiamma v/s The State of Kerala & Others*[8]: After hearing the case for over a decade in Thiruvananthapuram, after the death of a scrap metal shop worker, who the court claims was killed in custody, the two serving police personnel were awarded the death penalty by a CBI court. "Judge J Nazar had said during the sentencing of the two: "This is a violent and vicious murder by the accused (number) one and two... The actions of the accused will undoubtedly adversely affect the very institution of the police department... If the confidence of the people in the institution is lost, the public order and law and order will be compromised, and this is a dangerous situation.

- (III) *Yashwant And Others v. State of Maharashtra*: On 4 September, the Supreme Court upheld the conviction of nine Maharashtra policemen in connection with a custodial death case in 1993 and extended their prison terms from three to seven years each. A bench of Justices NV Ramana and MM Shantanagoudar reportedly upheld the order and stated that incidents involving the police tend to erode the trust of people in the criminal justice system. The supreme court said, "With great power comes greater accountability," thus raising the cops' jail time. Under Section 330 of the Indian Penal Code, the police officers are found guilty, which entails voluntarily causing harm to extort confession or to force property restoration.

CONCLUSION

The study concludes that in India, police brutality during an investigation is rising. The law allows and permits the questioning of an arrested suspect, but at the same time, it also provides that the police have no right to take the law into their hands and that no unconstitutional methods of prosecuting the case should be followed. In order to comply with the constitutional requirements and aspects of human rights, it is important in a democratic country that these crimes against the arrested person must be contained.

The Supreme Court has taken this matter seriously and has expressed its concern with respect to the number of incidents of police brutality. In India, there is no clear law to deal with the crime committed by police officers and hence the legislation does not take any moral or legal consideration. While some guidelines have been suggested and recommended by the Supreme Court in different cases of custodial violence law have not been taken into account and unlawful police acts are - at an alarming rate due to various factors in India. Thus, to curb these activities in India, there is a need for strict rules and regulations. In order to preserve the sovereignty and integrity of constitutional and human rights provisions, these crimes by police officers need to be controlled and curbed in India.

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