

CUSTODIAL DEATH IN INDIA-AN ANALYSIS

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Abstract

A

bench of justices S.S. Nijjar and F M Kalifulla was aggrieved when amicus curiae A M Singhvi moved an application seeking implementation of 15 more guidelines to suppress custodial excesses, which has resulted in the death of 11,820 and 3,532 reported cases of custodial torture between 2007 and 2012. The supreme court viewed a series of seriously ineffective implemented directions to rein custodial death and sought explanation from the centre and states after being informed that nearly 12,000 persons died- either in jail or in police stations- in last five years. This worst form of human rights violation is a world wide phenomenon that is inflicted upon individuals regardless of sex or age. This has become a very serious and alarming problem in third world countries like India. This article tries to analyse various provisions under the constitution of India providing basic fundamental rights to every individual in custody. This article also analyses various guidelines provided by the courts and award of compensation to the victim as an important methodology even though the constitution of India does not expressly provides for the right of compensation unlike other legal system.

Keywords-Implementation, guidelines, custodial excesses, phenomenon, compensation.

Introduction

“If I can love myself despite of my infinite faults, how can I hate anyone at the glims of few faults”. Alexander The Great 

The word custody indicates guardianship and protective care. Even if it indicates to arrest or incarceration. No civilized law supports custodial cruelty – an inhuman trait that springs out of an evil desire to cause suffering when there is no possibility of any retaliation; a senseless demonstration of superiority and physical power over the one who is overpowered or a collective indignation of sanctimonious thinking. In the civilized society, governed by the rule of law, custodial crime is one of the worst crimes and poses a serious threat to a tidy civilized society. Torture in custody scorns the basic rights of the citizens and is an aspersion to human dignity.

Prison torture is the confession of the failure to do justice to prisoners having human rights. For a prisoner, all fundamental rights are an enforceable reality restricted by the fact of imprisonment. Simply stated, the death of a person in custody whether of the Police or Judicial will amount to Custodial Death. The figures of NHRC show a total of 894 deaths in judicial custody. The letter, signed by the joint registrar (Law) of the National Human Rights Commission, stated that Uttar Pradesh leads the chart of deaths in judicial custody by a significant margin, with 204 deaths recorded in the period between 1 January 2017 and 2 August, 2017. The state was followed by Punjab with 76 deaths and Bihar with 64 deaths. Needless to say, a large number of custodial violence incidents go unreported. Arun Shourie once observed: The victims were invariably poor. Several of them dragged in on no formal charges at all. Even in the case of persons who were arrested, in an overwhelmingly large number of cases they were all accused of petty offences n fact, the victims of custodial violence are people from poor and backward sections of the society with little political or financial power to back them. Personal enmity, caste

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and political considerations and at times pecuniary benefits become important considerations for custodial deaths rather than investigation of cases.

Judicial Custody death

Our constitution has provided fundamental rights to guarantee certain basic rights and liberties to our citizens. There are several institutes making an effort to assure the reach and exercise of such rights by the common man. *In the case of judicial custody* the accused is sent to jail (prison) where for the purpose of investigation the police requires the permission of jail authority. So the deaths that occur in jail while in Judicial Custody are called as judicial custody deaths. There are basically two classified parts under the judicial custody death that are Natural death and Unnatural death.³ In the case of Natural death the SDM has the right to conduct magisterial enquiry under 176 CrPc and in such case no compensation is provided by state. But the exception is Tamil Nadu and Andhra Pradesh as they provide a compensation of Rs. 20,000 in the case of Natural death also. The Unnatural deaths are consider under four sub points that are Suicide (309 IPC), Accidental death (304A IPC), Murder (302 IPC), Medical Negligence (304 IPC). In such cases the Judicial Magistrate under 176CrPc conduct magisterial enquiry and in all such cases compensation are provided to the victims. The SC/ST are given more compensation in case of death in jail.

Death in Police Custody and Departments other than Police-

In *Herbens Kaur v. Union of India*⁴, that was a case where one person was called to the Police Station through the constable and thereafter his whereabouts were not known. A habeas corpus petition was filed and the claim for compensation was made and the Supreme Court directed an enquiry to find out whether the petitioner was mercilessly beaten in police custody which ultimately led to his death. On a critical appreciation of the testimony available on record, the High Court held- "the conclusion is irresistible that the truth has been attempted to be obliterated in such a manner so as to screen the real offender or create doubt about the persons put in the dock as accused and, therefore, the challan of the accused was eyewash for the general public". The High Court made a strong observation in this regard and directed the record of the police station to be thoroughly examined by holding a part-mental enquiry so as to bring to book such of the police personnel who may be found guilty of misconduct or negligence or dereliction of duty resulting into the death of the deceased while he was in the custody of the police.

Apart from the police there are several other governmental authorities also like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force (C.R.P.F.) Border Security Force (B.S. F.), the Central Industrial Security Force (C.I.S.F.) the State armed Police Intelligence Agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation (C.B.I.), C.I.D. Traffic Police, Mounted Police and I.T.B.P., which have the power to detain a person and to interrogate him in connection with the investigation of economic offences, offences under the Essential Commodities Act, Excise and Customs Act, Foreign Exchange Regulation Act, etc. There are instances of torture and death in custody of these authorities as well. In *Sawinder Singh Grover, Death of*. In reo the Supreme Court took suo-motu notice of the death of Sawinder Singh Grover during his custody with the Directorate of Enforcement. After getting an enquiry conducted by the Additional District Judge, which disclosed a prima facie case for investigation and prosecution, the Supreme Court directed the C.B.I. to lodge a F.I.R. and initiate criminal proceedings against all persons named in the report of the Additional District Judge and proceed against them. The Union of India/Directorate of Enforcement was also directed to pay sum of Rs. 2 lacs to the widow of the deceased by way of ex gratia payment

³ The Superintendent Of Police vs The Judicial Magistrate Court

⁴ Smt. Harbans Kaur vs Union Of India & Ors on 16 December, 1994

Equivalent citations: 1995 SCC (1) 623, JT 1995 (1) 240

at the Interim stage. Amendment of the relevant provisions of law to protect the Interest of arrested persons In such cases too is a genuine need.

Analytical study of the custodial violence

Human Rights are the fundamental rights that are intrinsic and inalienable for the survival of individual in the society. In the new millennium, by virtue of international declaration, it is the duty and the responsibility of the welfare state to protect these rights of individuals. The whole of constitutional machinery of India also aims at protecting the human rights. The Constitution of India, 1950 under Part III which deals with fundamental rights which are also considered as the basic human values. All these rights are consonance with the Universal Declaration of Human Rights, 1948⁵. Talking retrospectively, according to Montesque theory in India, there is separation of powers. Accordingly, there are three wings of the state, which play vital role for any type of tasks for the protection and preservation of human rights. These are legislative executive and judiciary. Besides this, press is considered as the fourth wing of the welfare state. In day-to-day life, the media is highlighting a lot of violation of human rights of citizens. .

It is astonishing fact that among all the violence, the most alarming problem in present millennium is of custodial death. A case pertaining to judicial custody death of Uttar Pradesh in which the Commission, on receiving information of the custodial death of a prisoner named Dhirender Singh in the District Jail, Jaunpur, called for a detailed report from the Government of Uttar Pradesh. The report that was received stated that certain Anti-Social elements had gone to the main gate of the District Jail on that date and had asked for an under-trial prisoner, Jaya Prakash Singh, on the pretext that they had to hand-over a letter to him. Jaya Prakash Singh went to the main gate, where the deceased was also present at that time. The ‘anti-social elements’ fired at Jaya Prakash Singh, but he escaped. However, a stray bullet hit the deceased in his stomach. He was rushed to the hospital where he was declared dead. The report further stated that the deceased had gone to the main gate to collect milk, bread and paper as he was authorized to do so. A detailed magisterial inquiry that was instituted to look into the matter arrived at the conclusion that there was negligence on the part of the jail authorities and that this had resulted in the death of Dhirender Singh.

In view of the findings of negligence/lapses on the part of the prison administration, the Commission issued a show cause notice to the State Government asking as to why immediate interim relief is not paid to the next of kin of the deceased. As no reply was received from the State Government in respect of the show cause notice, the Commission by its order awarded a sum of Rs. 75,000/- as immediate interim relief to the next of kin of the deceased.

While Going through a case in the NHRC which was related to the Judicial Custody death there was a person who was admitted to Jail and 5 days after entering the Jail he died in the custody. So the initial screening test of the prisoner was that a normal medical test was conducted for him and the person was under a treatment of heart blockage for past 3 years in a local hospital and if so was the case why was he admitted to Jail when they were aware that a proper treatment of him was going on in a hospital and even if he was admitted to Jail why was he not given proper treatment for his disease. The information that I could collect after talking to many people in NHRC was that the authority doesn’t take a proper screening medical test due to insufficient funds and many more reasons, which is actually a foul practice on the part of the authority.

While going through another case in NHRC regarding to Judicial Custodial death of UTP Bhairo Singh. The initial health screening report of deceased reveals that deceased was not suffering from any disease at the time of admission in the jail but he died the 2-nd day of entering in the jail due to Brain hemorrhage. According to the Post mortem report 4 abrasion of different size on elbow and ankle. The point here was that when the prisoner was bleeding from the mouth why was he not referred to the District hospital Mirzapur. I think there is negligence on part of the Authority as they are not able to record the actual initial screening report of the prisoners also according to the statistics of the prisoner statistics of India 2015 the total capacity of Jail in the country is 3,66,781 and the total number of inmates as on 31.12.2015 were 4,19,623 . So this reflects that the number of inmates are more than the capacity in the jail this is also a drawback as proper care of the inmates is not possible as which is also the cause Custodial deaths.

Other than the natural deaths under the judicial custody, there are also unnatural deaths are caused under JC. Recalling the suicide by one of the accused in Delhi gang rape case within 72 hours in March 2013 in Tihar Central Prison underscore the need to understand the factors behind committing suicide in prison. While suicide is recognized as a critical problem within Jail environment, the issue of prison suicide has not received comparable attention. However for making meaningful analysis and to understand patterns from the suicide deaths occurring in prisons, it is essential to understand the age group of deceased, period of detention, time of committing suicide, place and manner used, medical history including mental health, environmental factors, any prior history of suicide etc. so that corrective measures could be devised to remove the factors that facilitates in commission of suicide.

In Indian context, suicide death accounts for almost 71% of unnatural deaths reported in prison. It is also to note that suicide in a prison can have long-term effects on its culture (i.e., cause high level of stress on staff and inmates that have to deal with the aftermaths of an inmate suicide). Survivors of suicide are also often at a higher risk of suicide as they deal with the grief of the loss of a loved one. The Hon'ble Supreme Court in Nilabati Behera⁶ case asserted that the convicts, prisoner or under-trials are not denuded of their fundamental rights under Article 21 of the Constitution and there is a corresponding responsibility on the prison authority to make sure that person in custody are not deprived of the Right of Life. The state has the duty of care, to ensure that the guarantee of Article 21 is not denied to anyone. The state must take responsibility by paying compensation to the near and dear ones of a person, who has been deprived of her/ his life by the wrongful act of its agents.

Based on the legal pronouncement, the following points can be deducted:

1. Vicarious liability of the State—Since inmates in prison is under the safe custody of the state thus it is the responsibility of the state to ensure safety, security and wellbeing. IN case of any negligence or violation, the state is vicariously liable for the act of omission on the part of Jail Authority.
2. Liability under public Torts— As compared to civil liability under the laws of private torts, for violation of fundamental rights, the remedy Is not available in public law is not only to civilize public power but also to ensure the citizen that they live under a legal system wherein the right and interested shall be protected and preserved. The compensation is in the nature of the exemplary damages awarded against the wrongdoer for the breach of its public law duty.
3. Recovery of amount of compensation from wrongdoer Through the state is responsible to pay compensation on account of principle of vicarious liability but it is entitled to recover the amount from wrongdoer or delinquent officials responsible for negligence or commission of act.

⁶ Smt. Nilabati Behera Alias Lalit ... vs State Of Orissa And Ors on 24 March, 1993

My ardent concern is that the State cannot debase bastilles by zoological bestiality inflicted on criminals. It is psychiatric nonsense and medical menace to inflict injuries as a healing process. It is nobly believed that criminals are made and not born, and are curably human and not irredeemably brutish. Crimes are the psychotic syndromes and medico-legal recipes inside prisons where social beings are kindled are not killed must heal patients suffering from this. But I will take a stand that "Why are prisoners still treated as alien in the lay man's land". Our aim is to strive towards the goals of creating a just world where avoidable suffering and noxious negativity is extirpated and plentiful love, concerns overflows because every life in this world is painted by God and we are no one to make anyone's life colourless. To boost the morale of all those who are travelling to end continuous human rights violation, Thomas Alva Edison said that, "I will not say that I failed 1000 times, I will say that I discovered there are 1000 ways which can cause failure."

We still confide in our authority because they are trying fervently to doff the dust off their coats. They have the courage to lose the sights of the shore and by carrying this attitude only new oceans can be discovered. .

THE PROVISIONS UNDER THE CONSTITUTION OF INDIA REGARDING CUSTODIAL DEATH-
Death in police custody is one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity. In **Bhajan Kaur v. Delhi Administration** through the Lt. Governor the Delhi High Court while determining the scope and width of Article 21 of the constitution held as follows:

Personal liberty is fundamental to the functioning of our democracy. The lofty purpose of Article 21 of the Constitution would be defeated if, the State does not take adequate measures for securing compliance with the same. The State has to control and curb the mala fide propensities of those who threaten life and liberty of others. It is for the State to ensure that persons live and behave like and are treated as human beings. Article 21 of the Constitution is a great landmark of human liberty and it should serve its purpose of ensuring the human dignity, human survival and human development. The State must strive to give a new vision and peaceful future to its people where they can cooperate, co-ordinate and co-exist with each other so that full protection of Article 21 of the Constitution is ensured and realised. Article 21 is not a 'mere platitude or dead letter lying dormant, decomposed, dissipated and inert. It is rather a pulsating reality throbbing with life and spirit of liberty, and it must be made to reach out to every individual within the country. It is the duty and obligation of the State to enforce law and order and to maintain public order so that the fruits of democracy can be enjoyed by all sections of the society irrespective of their religion, caste, creed, colour, region and language. Article 38 of the Constitution also requires the State to promote welfare of the people by securing and protecting, as effectively as it may, a social order in which justice social, economic and political, shall inform all institutions of the national life. These are the goals set by the Constitution, and Article 21 and other fundamental rights are the means by which those goals are to be attained.

COMPENSATION ON CUSTODIAL DEATH-In Nilabati Behera v. State of Orissa.,⁸ the Supreme Court observed that it is axiomatic that convicts, prisoners or under trials are not denuded of their fundamental rights under Article 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by

⁷**Bhajan Kaur vs Delhi Administration Through The ... on 5 July, 1996**

Equivalent citations: 1996 IIIAD Delhi 333, 3 (1996) CLT 337, 1996 (38) DRJ 203, ILR 1996 Delhi 754

⁸**Smt. Nilabati Behera Alias Lalit ... vs State Of Orissa And Ors on 24 March, 1993**

Equivalent citations: 1993 AIR 1960, 1993 SCR (2) 581

law, while the citizen is in its custody, whether he be a suspect. Under trial or convict. His liberty is in the very nature of things circumscribed by the very fact of his confinement and, therefore, his interest in the limited liberty left to him is rather precious. The duty of care on the part of the State is strict and admits of no exceptions. The wrong doer is accountable and the State IS responsible if the person in custody of the police IS deprived of his life except according to the procedure established by law. The defence of "sovereign immunity In such cases is not available to the State. Therefore award of compensation would be a remedy available in a proceeding under Article 32 or Article 226 of the Constitution of India based on a strict liability or violation of fundamental rights.

In D.K. Basu v. State of West Bengal⁹, it has been held by the Apex Court that compensation can be granted under the public law by the Supreme Court and the High Courts in addition to private law remedy for tortious action and punishment to wrong doers under criminal law for established breach of fundamental rights. In Bhim Singh vs. State of Jammu and Kashmir, an MLA was arrested and illegally detained by the police. The Court after due examination of all the facts ordered for payment of Rs. 50,000/- as compensation. The Court referred to Rudal Shah and Sebastin M Hongray vs. UOI case.

In Praful Kumar Sinha vs. State of Bihar and others In this case compensation was sought in Tort Law by the family of three persons who had died in police custody due to atrocities committed by the police.

The apex court directed under Articles 32¹⁰ and 21¹¹ of the Constitution of India the State Government to make ex gratia payment of Rs 25,000 to family of each deceased. The settled principles of Law of Tort were invoked and the direction was also issued that the State Government may recover this amount from the tortfeasors, that is, the police officials.

The reason for reaching the decision in this criminal writ petition was to compensate the family members the loss to some extent

Conclusion and suggestions-

The solution to the problem of custodial deaths as such lies in measures to prevent custodial torture, in fact, such violence itself, and reduce the number of custodial deaths to the extent possible in other circumstances by evolving efficient systems and procedure for prompt and adequate medical aid, where required, and reasonable preventive measures against accidents and suicide. It would also be necessary to put such deaths in proper perspective to change the current public perspective. The various suggestions can be made to prevent deaths or violence in the custody-

Suggestion-

1. The police should be trained in using new scientific and psychological techniques instead of using torture.
2. The working conditions of the police personnel should be improved and they should be provided with more promotional avenues on seniority basis.
3. The control of the Police should be brought under the Governor of the concerned State so that the police could work in a clean atmosphere free from political pressures.

⁹ Shri D.K. Basu, Ashok K. Johri vs State Of West Bengal, State Of U.P on 18 December, 1996

¹⁰ Article 32 under the Constitution of India – Right To Constitutional Remedies

¹¹ Article 21: RIGHT TO LIFE AND PERSONAL LIBERTY

4. A separate offence provision should be made by amending Section 302 of the Indian Penal Code regarding treatment of custodial death as murder.

5. The medical facilities should be provided in jails so that in case of emergency proper and timely medical help could be provided to the persons in the jail custody.

6. A counsel should be allowed to be present during interrogation to check the custodial violence by investigating officer.

7. Section 114-B in the Indian Evidence Act, 1872 as recommended by the Law Commission in its 113th report, should be inserted to introduce a rebuttable presumption that injuries sustained by a person in police custody were caused by the police officer.

8. The compensation in case of custodial deaths should be a State responsibility. The State Government in turn can recover the amount of compensation from the offenders. For implementing this, a separate Tribunal/Board should be set up at the District level.

9. The Government should reserve a quota of one percent in Government jobs and in educational institutes for the dependants of the victims..

10. The most important requirement is to sanction a monthly pension to the miseries and sufferings. dependants of the victim of custodial death because Government is liable for their loss.

“Peace will not come out of a clash of arms but out of justice lived and done” Mahatma Gandhi

