

CUSTODIAL DEATHS

Ashima Tehri*

Dr. Sandhya Verma**

ABSTRACT

This work shows how custodial deaths in India have risen in the past years and to show the state of police system in our country. This work refers to some cases and the reasons behind those activities and shows custodial deaths whether in judicial custody or police custody are not uncommon in India and it has become a necessary part of investigation. This research shows how many deaths in custody have been reported in the previous years. The present study is a moderate attempt to explore causes, consequences and preventive measures related to deaths in custody in India.

Introduction

Custody is defined as, when a person's freedom has been denied by law enforcement agencies, such as during transport prior to registering a case, or during arrest, prosecution, sentencing, etc.

A **death in custody** is a death of a accused or convicted person in the custody of the police, other authorities or in prison.

Any death in police custody is a serious matter causing public disquiet. Custodial deaths have become a major human right issue in world including India. Almost 900 deaths in custody have been reported in 2017: 894 judicial custody deaths and 74 deaths in police custody. This shows that total number of deaths in custody has been increasing continuously.

Most of the times such deaths are considered as unnatural because the person in the custody is solely dependent on the custodial authorities for all of his/her constitutional rights including access to health care. On the contrary it is found that majority of deaths in custody are natural. Hence post-mortem examination of custodial deaths requires prior organisation, planning and meticulous approach to put pause on all the rumours and to give best possible opinion regarding cause and manner of death.

National Human Rights Commission of India has hence laid down strict guidelines to be followed after custodial deaths. It is found that major reasons behind custodial deaths are mainly unawareness and carelessness on the part of custodial authorities on the health status of the inmates and poor condition of the cells.

On the other hand unnatural deaths though less common as compared to natural deaths are equally important because they lead to public and media speculations against custodial authorities.

From previous studies it is clear that many of these deaths are premature deaths and can be prevented with proper care and treatment. However knowledge and data regarding such deaths is important to focus attention on prison medical services and to facilitate the implementation of preventive programs. Number of studies has been carried out on custodial death by various international agencies and authors of western countries, but only few studies have been done in India till date. More and more studies in this field are required in future. Hence we have conducted this study to highlight issues relating to deaths in custody.

Persons accused or convicted do have human rights and prison torture is the basis of the failure to do justice to living man. For a prisoner, all fundamental rights are enforceable reality, though restricted by the fact of imprisonment. Simply stated, the death of a prisoner in custody whether Police or Judicial will amount to Custodial Death. No doubt, the police plays an important role in safeguarding a person's life, liberty and freedoms. But the police must act

carefully, showing full respect to the human rights of the people, remembering that they are also under the law, not above it and can be held liable for the violation of human rights.

Concept of custodial death

Whenever death occurs in any custody, it raises the interest of public and attracts media attention. Not that at each time the death is due to violent causes but at times may be due to natural causes or due to inadequate medical facilities or medical attention and diagnosis, or negligent behaviour of people in power or may be due to physical abuse and torture. Since time immemorial man has been attempting to subjugate his fellow human beings. The people in power use various methods to twisting and turning the people through violence and torture, and torture under custody has become a global phenomenon. Men, women and even children are subjected to torture in many of the world's countries, even though in most of these countries, the use of torture is strictly banned by law and by the international declarations signed by their respective representatives. A problem of increasing occurrence and repugnance had been the methods of interrogation and torture perpetrated upon prisoners and detainees. Persons held in custody, by police or by prison authorities, retain their basic constitutional right except for their right to liberty and a qualified right to privacy. The Magistrate investigation is mandatory for any death of an individual in custody to ensure examination of the circumstances leading to death.

Constitutional scheme

From judicial perspective 'the right to life and personal liberty' contained in Article 21 of Indian Constitution encompasses all basic conditions for a life with dignity and liberty. Such an approach allows it to come down heavily on the system of administration of criminal justice; custodial justice in particular, and law enforcement. It also brings into the fold of Article 21, all those directive principles of State policy which are essential for a 'life with dignity'. The right to life guaranteed by Article 21 of the Constitution of India is not only a fundamental right but is the basic human right from which all other human rights evolve. It is basic in the sense that the enjoyment of the right to life is a necessary condition for the enjoyment of all other human rights. The right existed even prior to the commencement of Indian Constitution.

In **Rajendra Prasad Vs. State of U. P.**¹ **Krishna Ayer J.** expressed his view by stating that the Criminal law of Raj vintage has lost some of its vitality, notwithstanding its formal persistence in print of the Penal Code so far as Section 302 of IPC is concerned. In the post Constitution period, Section 302 of IPC and Section 354(3) of Cr.P.C. have to be read in the light of Parts III and IV of the Constitution. He further went ahead in saying that the death sentence would not be justified unless it was shown that the criminal was dangerous to the society.

In **Bachan Singh's**² case the Supreme Court elaborated 'special reasons' for awarding capital punishment and established, that when the conviction is for an offence punishable with death, the judgment should state the special reasons for such a sentence. Constitutional provisions apart, the Supreme Court has evolved a number of safeguards to protect the dignity and personal liberty of persons awarded life sentence while waiting for execution of the sentence. These include right to worship, right to see family members, right to remorse etc. In **Attorney General of India Vs. Lachman Devi** case the Court opined that the execution of death

¹ 1979 AIR 916, 1979 SCR (3) 78

² AIR 1980 SC 898, 1980 CriLJ 636, 1982 (1) SCALE 713, (1980) 2 SCC 684, 1983 1 SCR 145

sentence by public hanging is barbaric and violative of Article 21 of the Constitution. The Court held that although the crime of which the accused have been found to be guilty was barbaric, however, a barbaric crime does not have to be visited with a barbaric penalty such as public hanging.

CUSTODIAL DEATH: A WORST KIND OF CRIME IN A CIVILIZED SOCIETY

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. 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 must shape the society so that the life and liberty of a person must be safe and given supreme importance and value. 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 responsibility of the State to enforce law and order and to maintain public order so that democracy can be enjoyed by all sections of the society irrespective of their religion, caste, creed, colour, region and language. Article 21 of the Constitution is an instrument to attain the goal of freedom of a person from deprivation and oppression and its violation cannot and must not be tolerated or condoned. Preamble to the Constitution clearly indicates that justice, liberty and equality must be secured to all citizens. Besides, it makes compulsory for the State to promote fraternity among the people, ensuring the dignity of the individual and the unity and integrity of the nation. 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. Therefore, it becomes the obligation and avowed duty of the State to adopt means and methods in order to

realise the cherished aims. The conduct of any person or groups of persons has to be controlled by the State for the lofty purpose enshrined in Article 21 of the Constitution"

In *Nilabati Behera v. State of Orissa*¹, the Supreme Court observed that it is self-evident 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. 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 answerable and accountable and the State is under obligation if the person in custody of the police is deprived of his life except according to the procedure derived 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. A person in jail does not lose his fundamental rights under Article 21 of the Constitution which requires a person to be treated with dignity. It seems that most of the jails in our country are jungles where the security people often behave like animals in mal-treating the prisoners. It is the prime duty of the Jail authority being custodian to provide security and safety to the life of prisoners while in jail custody, even though he is a criminal or an accused in a criminal case.

CONCLUSION AND SUGGESTIONS

Work in a prison is public service. Jails are the critical part of any justice system and as a public sector responsibility, most states require operating jails or housing their prisoners in other local government facilities. Violence of any kind at the hands of police or any governmental or non- governmental agencies is counterproductive. It can turn innocent suspects or prisoners into hard core criminals. The grudges they have against any particular official sometimes motivate them to rebel against the whole country and its citizens. Custodial management is very important to overall jail management program so that the authorities are able to accomplish the mission despite various challenges. If any policeman or for that matter any other officer of any other agency of the government is found to have misconducted, the authorities should not hide the crime under the pretext of police solidarity or brotherhood. Custodial violence is amongst the worst crimes in any civilized society. It is a blatant violation of human dignity.

¹ 1993 AIR 1960, 1993 SCR (2) 581

The second issue addressed is the liability of State to protect the victims of torture and the role played by various Government instruments viz. Judiciary, NHRC and Non-Government Organizations (NGOs) etc. The Vedas, the material religious works of the ancient Hindus, that offer guidance, inter alia, on religious and social obligations constituted the base on which the Hindu law was built. The philosophy of human rights in the world over has today proved to be dynamic and in continuum transformation. The challenge is to achieve the appropriate balance between, the need to maintain the integrity on the one hand and credibility of the human rights tradition, on the other hand.

In India, where the majority people are illiterate, ignorant and poor, they are likely to be more prone to inhuman treatment and exploitations. Many factors can be attributed to the courses of the human rights violations in police custody such as, familial, social, economic traditions, political etc. Inadequate and improper training of police personnel, corruption, lack of human rights awareness, non-use and non-availability of scientific means of investigation and interrogation, absence of effective system of collection of evidence, lack of necessary infrastructure in police stations, work load of police personnel, understaffing in the police stations, insufficient judicial vigilance and other supervisory mechanism, delay in criminal justice system etc. have also contributed to the infliction of torture by the police on persons in their custody. The absolute prohibition of torture is underlined by its non-derogable status in human rights law. There are no conditions in which States can set aside or restrict this obligation, even in times of war or other emergency threat to the life of the nation, which may justify the suspension of limitation of some other rights.

SUGGESTION

I would like to suggest following measures which need to be adopted to improve the present situation:

A redressal mechanism needs to be introduced consisting of a three-tier system - Grievance Cell in every police circles, Complaint Board in all the districts and a State Security Commission at the State level. For the smooth functioning of the mechanism and for a popular representation, a civilian control mechanism be included in the form of Custodial Justice Committee at the cutting edge level. Reputed human rights activists and social workers preferably from the locality, media men, nominees from the bar and nominees from the police department should be the members of the Committee to ensure custodial justice of arrested persons.

The Committee should elect a Custodial Justice Officer to look after the welfare of persons who have been taken into custody by police. It should be made obligatory on the part of the

arresting police officer to inform the Custodial Justice Officer the matter of arrest as well as all other details such as the ground of arrest, time of arrest, persons who have been intimated and the health condition of the person in custody.

A system for getting a signed statement from the Custodial Justice Officer and the relatives that they have been intimated about the details regarding the arrest should be introduced. District Level Human Right Cells should also be constituted in all the district headquarters similar to the State level Human Rights Commission. Members of the District Human Rights Cells, and the Custodial Justice Committee and Custodial Justice Officer should be statutorily empowered to have immediate and unhindered access without prior notice or permission to all places where people may be suspected to be detained by the police and to hear them and to take appropriate actions against the delinquent officials.

The release of a person from police custody should be done only in the presence of his relative or friend or his advocate or a respectable person of the locality or a member of the Custodial Justice Committee. There should be a proper record consisting of the whereabouts of the detainee and his arrest.