



CUSTODIAL DEATH CRITICAL ANALYSIS

Pracheen Raj, BALLB 5th year, Law College Dehradun.

ABSTRACT- Custodial death is something which have universal problem and can be consider as one of the cruelest forms of human kind. Custody means under the guardianship, just imagine the situation where protector of mankind itself violating the law of human rights, it is one of the heinous crimes for entire human kind. Where people believing that police are meant for their protection and police itself taking disadvantage of their authority. There are many provisions present in Indian Constitution and statutory law which protect the rights of prisoner, like in Constitution Article 20(1) & (3), Article 21, Article 22 etc. Other statutory provision like section 300, 330, 331, 348 of Indian penal Code, section 56, 57, 76, 161, 146, 167 of Code of Criminal Procedure, Section 24, 145, 114B of Indian evidence Act 1872. This article mainly focuses on the issue's relation to the custodial death, various measure to delimit the powers of the police in relation with the custodial death with the help of law commission reports judicial pronouncement and lastly suggestive measure to curb down custodial death.

Keywords: Custodial death, mankind, custody, police authority etc.

I. INTRODUCTION

What is death in custody?

Custodial death is an illegal act, where demising of person takes place and such accused is under the custody of police, which may be brought in the occasion of being under trial or police have suspected that such person have committed cognizable and non-bailable offence. Custodial death is like a black spot on whole police department.

Usually, custodial death take place where police is conducting investigation of such offence. In present scenario everybody wants name, fame and money in minimum period of time, which make them ready to choose wrong path, same way, it seems many time police tortured accused under his custody to confess such offence, which cause police officer get promoted on the basis of solving cases or their previous record.

Just imagine once, how our society will suffer if savior of society i.e., *police* will be started using their law and power in destructive manner. Police meant to protect the society and stop people not to harm society and their people in morally, ethically or legally way.

The idea of custodial death is not a new emerging issue for Indian culture, such heinous crime take place during British era also, where Indian were kept into the custody of Britisher during interrogation and Britisher tried every possible to make such person torture and sometime Indian bend his life Infront of death.

There is no specific definition of custodial death as it is not defined anywhere in the law but in the case of *shri D.K basu and Ashok K. johri vs. State of West Bengal and State of U.P 18/12/1996*¹ In this case hon'ble court define **custodial torture** as "it is done on human being by another human being where to impose his will, it is done by "strong" over "poor". In present scenario the term "torture" is become synonymous to darker side of human civilization.

Torture is something which even destroy the human soul also and there is no medicine or any procedure to heal up from such things. Torture cannot consider be only physical torture but also be count as a mental torture as well and when human body cannot able be handle such physical violence then such torture take place into death.

What is the difference between police custody and judicial custody?

➤ **Police custody**

Police custody means accused or suspected person is kept in the lock up within police station and when accused is arrested by police on the ground which is defined under section 41 of CrPc, 1973 where police have right to take such accused person into the police custody for 24 hours and from time of arrest within 24 hours police have to present accused in front of magistrate excluding the time of journey so during 24 hours police have full power to do interrogation and investigation and find out the actual truth behind the crime and it seems many times such power is used by police in a negative way which causes judicial death.

➤ **Judicial custody**

Judicial custody means when suspect or accused person is kept or lodged in the jail by the order of concerned magistrate under section 167 of CrPc. In other words, when accused person or suspect is kept under the custody of Magistrate not under the custody of police. In simple terms, when accused is detained under the purview of judicial magistrate and lodged in jail of central or state prison and under judicial custody police have to seek permission from court for interrogation.

What is the difference between convicted person and person in custody?

➤ **Prisoner or convicted person**

Prisoner means a person who is declared by **court** to be convicted for an offence and sent into the prison for the punishment for a specific period of time according to provision of law of time being in force.

➤ **Person in custody or accused person**

A person in custody means such person who is suspect or accused or under trial prisoner who is not decided by the hon'ble court that he is the person who committed the crime and these under trial prisoners are kept separately from convicted persons.

There is a very thin line difference between accused person and convicted person. Accused persons are those who have yet not been decided by court that such person is guilty of such offence or not and on the other hand convicted persons are those persons who have been decided by court that such person is guilty of such offence.

Extra judicial killing by the police officer

There are two types of extra judicial killing i.e.-

- 1. Custodial death**
- 2. Police Encounter**

Both custodial death and encounter are slightly different from each other, when police tortured or showed cruelty on suspect and tried every possible way to give statement what they want from suspect and if suspect gives up in front of death and police have no excuse to defend himself on ground of self-defence then it is considered as custodial death.

On the other hand when police have proper excuse to plea, that he killed suspect on the ground of self-defence then it is counted as encounter. Police encounter can be justified or unjustified.

1. On what situation police encounter can be considered as justified

Police encounter can be considered as legal when police go to arrest a person and such person tried to escape himself from arrest or started attacking on police and police have reason to believe that his life is in danger then in counter attack police have power to do encounter but firstly police have to take every possible way to catch him alive but in case of they have reason to believe if they didn't kill him may be possible such may be kill them then police have legal power to do encounter, as according to section 46(2) if such person forcefully endeavours to arrest or attempt to evade from arrest then in that case police officer or

any person who is authorised to arrest him can use every possible need to arrest him but that should be justified.

2. On what situation police encounter cannot be consider as justified

It can be said police encounter would consider as illegal when just above para have vice- versa move. When police have no reason to prove, that, they killed such person to save their life and when it seems in fact of the case that police have their pre- planned strategy to kill such person then it is called as fake encounter.

For example: - As three years ago, in 2018 **India Today** had conduct an investigation and expose Uttar Pradesh's cash for encounter raj

An alarming data of custodial death

Number of custodial deaths during 2019 remained over five persons per day.

According to the National Human Rights Commission of India shocking data came out, i.e., from February'2020 to February'2021 excluding the month of November'2020 (police) custodial death are 95 in numbers whereas (judicial) custodial death are 1747 in numbers which means total 1842 people were dead in custody.

According to NCAT in 2019, 125 people were dead in police custody and out of the 125 deaths, 93 persons which means 74.4% died during police custody whereas rest of the 24 people which means 19.2% were died under suspicious circumstances in which police were claiming that 16 were dead as they committed suicide and 7 were suffering from illness that's why they dead and 1 is slipped in bathroom of police station

Name of State	Number of police custodial death in 2019
Uttar Pradesh	14 cases
Tamil Nadu	11 cases
Punjab	11 cases
Bihar	9 cases
Madhya Pradesh	9 cases
Gujarat	8 cases
Delhi	7 cases
Odisha	7 cases
Jharkhand	6 cases
Chhattisgarh	5 cases
Maharashtra	5 cases
Rajasthan	5 cases
Andhra Pradesh	4 cases

Source: National Campaign Against Torture 2019, Annual Report

Haryana	4 cases
Kerala	3 cases

Karnataka	3 cases
West Bengal	3 cases
Jammu and Kashmir	2 cases
Uttarakhand	2 cases
Manipur	2 cases
Assam	1 case
Himachal Pradesh	1 case
Telangana	1 case
Tripura	1 case

Source: National Campaign Against Torture, 2019 Annual report

According to National Crime Records Bureau, in the year of 2017, 58 cases of custodial death which were even not presented in front of court of justice.

What are the causes of custodial death?

The main aim of Criminal Judicial System is to find out the actual person behind the crime, that's why police were made so that they provide safeguards and protection to their people and that's an only reason, they have authority to do interrogation and investigation, so that victim will get justice through court with the help of police in finding out the evidence and when these powers are starting use in adverse way then it can be say it will be destruction of human kind and society.

In spite of the fact, that people who are living in society feel concerned regarding custodial death but even though no improvement has seen in it. In spite of the fact, if data analysis regarding literacy from previous record the rate of literacy has been increased and now people are aware about their rights and duties but still large amount of society is unaware, they even don't able to understand there are still some restrictions on police which they are not allowed to go beyond that and if they do so it would be violation of law. Police have no right to take life during the interrogation, as it is also mention in the exception of Section 300 which state that no public servant have right to exceed his rights which cause death of somebody and if it does so then it will be count under Culpable homicide not amounting to murder and after go through section 330 of Indian penal code, which clearly state that if in case public servant extort to any person to confess according their will, then such public servant is liable for the punishment of imprisonment up to 7years. No law permit, police or any public servant to use illegal or arbitrary power.

Under this, an attempt is made to find out what is the root problem of the custodial death and why such heinous crime exist in society. Causes of custodial death are-

1. No proper search of arrested person take place before entering in the lock-up for interrogation, resulted such person get chance to commit suicide, by cutting their nerves or eating poison substance.
2. Suicide in police custody by the arrested person is only the reason negative attitude and lethargic behaviour of police.
3. Police know only language of force; they never adopt other method while conducting interrogation.
4. No proper treatment, medicine provided to arrested person in the lockup
5. There is no transparency in their procedure, as it seems sometimes among police officers, they showing their unity so that no action will be taken against such officer.
6. Feeling of hatred in the eyes of people in the society as well as police, they never trying to understand that accused is still innocent until it is not proved guilty by the court and this emotion support police officer exceed his right to use force which itself is illegal.
7. As police officer is filled with burden to solve the cases as soon as possible so that they work on next case, which resulted lack of patient and tried to impose their will on arrested person so that, arrested person give statement according to them.

8. Feeling of greediness, as every police officer have desire to get promotion, increment of salary and archive higher post and these are only possible when they solve as many cases as they do which resulted, they starting using force on arrested person.

9. At the time of conducting interrogation, they never respect the law of human rights sometimes their aggression seems that they even forget to identified that person who is Infront of him is also a human being.

10. They treat equally whether such person is accused for the first time or habitual offender, they always use their traditional method to find out the evidences.

Legal protection in National and International law

International law dealing with human rights

There are many safeguards are given which protect the rights of arrested person

According to Universal Declaration of human rights 1948, it shall be presumed no person will be declared guilty until it is not proven.

Moreover, under section 5 of Universal Declaration of Human Rights 1948, no person has right to tortured or commit cruelty on other person and every person is legally protected even though he is anywhere in the world.

Even Article 6 of International Covenant on Civil and Political Rights state that, every person has inherent right to live and person is allowed to use arbitrary power to deprive their life.

There are some basic principles define under section 6, 7 and 8 of Standard Minimum Rules for the Treatment of Prisoners which state that no person would be discriminate on the ground of sex, colour, race, language, origin, social, religion and place of birth and in case of prisoners, register must be maintained to register all the names of prisoners before enter into the lockup. All the different categories of prisoner must be kept separately into the cells like children, men, women, on their criminal records, sex, age, different ground on which they were convicted. Civil prisoners must be kept separately from criminal prisoners. Accommodation of younger prisoner should be separately from adult prisoner so that younger prisoner not choose wrong path and get reform in the jail and become the assets of their country.

Indian law relating to protection of rights of accused.

Constitutional Provision

D.K. Basu v.State of West Bengal in this case it was held that, Article 21 of Indian Constitution is a fundamental right which state, right to live and personal liberty which further includes right to live with human dignity. Under this case, hon'ble Court interpreted and held that Article 21 guarantees against torture and assault done by the state or their functionaries.

According to constitution of India, no arrest shall be made until without being informed and no person is shall deprive the right of arrested person to concerned and choose legal practitioner of his choice.

Article 20(3) of Indian constitution, which itself a fundamental right, state that, no one compelled to accused person to give witness against himself, even though police keep forcing arrested person to give statement against himself, even Code of Criminal Procedure and in *Baldevsinghv.state of Punjab* held that statement which is record under section 161 of CRPC shall not be use for any purpose until it helps in contradict the witness, prescribed under proviso of section 162(1) read with section 145 of the Indian Evidence Act, 1872.

Protection Under Crpc, 1973

According to Section 57 and 76 of CRPC 1973, no police officer or other person shall detain in custody more then 24hr as it is mandatory to present accused before magistrate within 24 hr from the time of arrest which exclude the time of journey.

According to Section 56 of CRPC 1973, no police officer will arrest any person without warrant in case of non- cognizance case and if such crime is bailable offence without delay bail should be granted with or without bond as case may be.

According to Section 161 of CRPC 1973, statement which was recorded at the time of police custody shall not be relevant, it is only relevant only in the case of contradict such witness in the manner provided under section 145 of Indian Evidence Act, 1872, prescribed under proviso of section 162 of CRPC, 1973.

Statutory Provisions relating to protection of rights of accused.

The Prison Act, 1894

Prison Act 1894 is the first legislation act, which states about the rights of prisoner like –

- There must be proper and sanitary accommodation.
- Provision introduced related to physical and mental health issues.
- Provide Medical facilities and examine time to time to record health condition of prisoner.
- Separate cell was made for the children, female, male, habitual convicted person and under- trial prisoners.

The Prison Act, 1990

Under this Act, duty was imposed on government to transfer lunatic or unsound prisoner from prison to lunatic asylum, so that proper care can be made. If in case High court recommends for the free pardon to specific prison to government then such recommendation permits him to be at liberty at their own cognizance.

The Transfer of Prisoners Act, 1950

As India is one of the second leading country in population and crime rate is also increasing day by day, as compared to south India, north India makes larger contribution in case of heinous crime, near about 60% of murder and rape are committed in north side of India. As Indians are always ready to face future challenges, that's why provision was made to transfer prisoner from one state to another state, as create problem to keep over- populated prisoner in one place.

Law Commission 113th Report, 1985

Under this commission report, it was suggested that the burden of proof must be lies on prosecution i.e., police alleged that bodily injury occurs on arrested person were given in police custody or not. Moreover, suggestion was made to insert section 114B under Indian Evidence Act 1984, which provides safeguard to defence as presumption would be made if in case evidence were found that such body injury cause during police custody. Moreover, while considering question of presumption for the said suggestion, on the same other relevant must also be consider like at what time period accused was in police custody, what was his medical condition at that time and what are the evidences recorded by the magistrate.

Law Commission 152nd Report, 1994

This particular report dealt with the issue of arrest and abuse the authority by the police officer. This report again suggests to introduce section 114B under Indian Evidence Act 1872 As it was previously recommended in 113th report of law commission. Law commission 152nd report further suggested to amend Code of Criminal Procedure and introduced section 41(1A) so that it would be duly recorded why such arrest was made and also add section 50A under the code, so that nominated person get to know about the arrest of his concern person.

National Human Rights Commission

NHRC, on 4/09/2020 issue an order “for a mandatory judicial magistrate inquiry into every case of death in police or other custody, authorised by the court under section 176(1A) of Code of Criminal Procedure”.

Role of Judiciary

Smt. Nilabati Behera vs. State of Orissa and Ors

In this case it was held by Hon'ble Court, that every person has right to life which include prisoners also conformed under Article 21 of Indian Constitution. Prisoner are also having all the basis of fundamental rights and even police have not right to snatch away their life, it is a duty of police to obey the law and

also protect the fundamental rights of prisoners. Moreover, court took further reference of Article 9(5) which state about the right of compensation in case of victim of unlawful arrest and perform torture on victim.

Yashwant and others vs. State of Maharashtra

The facts of this case are, there were nine police men and all were charged for custodial death under Section 330 of Indian Penal Code. Later on, the hon'ble court held liable to all nine police men for the same and also state that, enhancement of punishment is important of police officer as it give lesson to entire police unit, that such act is illegal act and help in reducing custodial death in future.

In Manna vs. people of illinois

In this case it was held by hon'ble Supreme court of US, "once stated that life is not merely animal existence" in simple word, Article 21 cover right to life, but this Article is not only protecting the life of person but it also ensures the live with dignity. Prisoner also have right to enjoy fundamental right in with reasonable restriction and even state is not allowed to such right from them, other than established by law.

II. CONCLUSION

India should sign the UN convention against torture and should formulates laws to deal with this issue. Police reforms guidelines should be formulated for the educating the police officers during training session specially on the matter of deprivation of personal liberty and such heinous practice can only be possible with the anticipation of the senior police officer so if such situation is trace then immediate reorientation of police officer should be done.

In case of the imprisonment of the accused is done then his or her relatives should be permitted to access the accused for the inspection.

CCTV cameras should be installed in every prison shell and in the interrogation rooms to access the activities of the police officers so their illegal action can be controlled.

Senior police officer should visit surprisingly so that real face of the police officer can be trace out and this should be mandatory as it was suggested in the landmark case D.K case in 2015.

There should be strict implementation of the 273rd law commission report. Police officer who commits custodial torture should be prosecuted criminally and deterrent action should be taken and held liable instead of taking administration action against such officers.

III. SUGGESTION

1. Police should use reformatory ways or techniques during interrogation instead of using torture.
 2. The Police action should be checked by the governor of the concerned state so that Police will get an opportunity to work under clean environment without influence of political parties.
 3. A separate provision should be made to deal with custodial death by amending section 302 of the IPC regarding treatment of custodial death as a murder.
 4. Medical facility should be at alarming so that in case of injury it can be cured on time so that custodial death situation can be avoided.
 5. Legal representative of the accused should be allowed to be present during the interrogation by the investigating officer for the better surveillance of the police officer.
 6. The state is liable to pay the compensation in case of custodial death and in state should recover the compensation amount from the offender who commit this offence and separate tribunal/Board to deal with this matter.
 7. The most important thing is to introduction of monthly pension to the dependants of the victim of the custodial death.
 8. An Unnatural death should be investigated properly and stringent action should be taken as this idea is put forwarded by the leading case DK Basu.
- "Peace will not come out of a clash of arms but out of justice lived and done"
- Mahatma Gandhi

REFERENCES

1. <https://indiankanoon.org/doc/501198/>
2. Section 57, Code of Criminal Procedure, 1973.

3. Section 3, Evidence Act, 1872
4. Section 27(3), Prison Act 1894
5. Code of criminal procedure, 1973
6. <https://www.indiatoday.in/india/story/three-up-cops-suspended-after-india-today-expose-on-fake-encounters-1307165-2018-08-07>
7. <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>
8. https://nhrc.nic.in/complaints/human-right-case-statistics?field_date_value%5Bvalue%5D%5Bmonth%5D=2&field_date_value%5Bvalue%5D%5Byear%5D=2021
9. <http://www.uncat.org/wp-content/uploads/2020/06/INDIATORTURE2019.pdf>
10. https://lexforti.com/legal-news/custodial-death-in-india/#_ftn14
11. Indian penal code, 1860
12. Section 11 of the universal declaration of human rights, 1948
13. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
14. <https://www.refworld.org/docid/3ae6b36e8.html>
15. D.K. basu vs State of West Bengal (1997) 1 SCC, 196
16. Article 22 of Indian constitution
17. Section 161 of Code of criminal procedure
18. Baldevsingh vs State of Punjab AIR 1991 SC, 31
19. <https://www.indiatimes.com/news/india/why-lesser-rapes-are-happening-in-south-as-compared-to-north-india-524614.html#:~:text=In%20effect%2C%20three%20crimes%20were,India%20as%20per%20the%0NCRB.>
20. 1993 AIR 1960, 1993 SCR (2) 581.
21. Article 9(5) of International Covenant on Civil and Political Rights.
22. 1973 AIR 337, 1973 SCR (1) 291.
23. 94, U.S, 113 (1876).