



Provisions related to Custodial Death in India – An Analysis

Dr. Sandeep Saini

Assistant Professor,

Geeta Institute of Law, Panipat, Haryana

Email - ss45589@gmail.com

Abstract: Custodial violence and abuse of police power have emerged a major issue of human rights concern and one of the root obstacles to democracy and development of human well being in contemporary societies. The term 'custodial violence' includes all types of physical and mental torture inflicted upon a person in police custody¹. It is a crime against humanity and a naked violation of human rights. The practice of custodial violence in the developing countries like India, is however, more difficult and complex. A large number of cases of police brutality take place not because of individual aberration, but because of systematic compulsions. The nature of custody may be judicial, police or under any institution obliged to take care of the inmates like hospitals, homes etc. or may be in the hands of terrorist organizations or armed groups or insurgents etc. The practice is widespread and gone unchecked since British days if there was no tacit support of senior police officials, bureaucrats, politicians and judiciary. In recent years, custodial crimes have drawn attention of Public, Media, Legislature, **Judiciary** and even Human Rights Commission. Nevertheless, judicial activism, widespread media coverage, initiatives taken by National Human Rights Commission as well as Civil Society Intervention have shown their concern for combating torture and upholding human dignity. Custodial violence primarily refers to violence in police custody and judicial custody. Besides death, rape and torture are two other forms of custodial violence. Custodial violence is not a recent phenomenon. Sections 330, 331 & 348 of IPC; Sections 25 & 26 of the Indian Evidence Act; Section 76 of CrPC and Section 29 of the Police Act, 1861 were enacted to curb the tendency of policemen to resort to torture to extract confessions etc. Deaths in judicial custody is directly linked to the number of prison population during a given period¹. Considering the gravity of the situation, it may be argued that there is a strong need for better custodial management. Role of police personnel is crucial in this regard. They should be trained in matters pertaining to human rights and prison management. There should be adequate number of medical and women personnel in prisons.

Key Words: Violence, Human rights, Custody, Prison.

1. INTRODUCTION:

1.1. POLICE ATROCITIES:

Power has the tendency to make men go dizzy and policemen are no exception. Powers are granted to the police in order to enable them to enforce the law and protect people effectively. However, it is sometimes the desire to solve a case at the earliest and sometimes plain greed that makes them use it illegally. Article 21 of the Constitution provides that no person shall be deprived of his life and personal liberty except according to procedure established by law¹, which is inbuilt guarantee against torture or assault by the state or its functionaries. However, torture and assault have become part of police ways unfortunately and in many cases custodial deaths have been found to be little short of 'custodial murder'. Custodial violence raises serious questions about the credibility of the Rule of Law and administration of criminal justice system. An offender has every right to be tried and punished in accordance with the law and any punitive action taken outside the ambit of law is illegal. Besides, no matter how heinous the crime be, and howsoever dangerous be the criminal, he or she has every right to be treated with human dignity. The courts have even discouraged the practice of handcuffing the accused unless it is necessary. Several international conventions universally recognize human rights as inalienable. There is ample evidence of increasing police deviance in India. Incidents of brutality, extortion and other crimes committed by police officers in different parts of the country are reported in Indian newspapers. The National Human Rights Commission's data shows that the number of complaints relating to 'deaths in police custody' reported

¹ Jain M.P., "Indian Constitutional Law", 5th Edition, Vol. 1, Wadhwa and Company, Nagpur, 2003, p.1295



to them increased from 136 in 1995-96 to 183 in 2002-03. During the same period, 'illegal detention/ arrest' increased from 112 to 3595,

1.2. PHYSIOLOGICAL VIOLENCE: To break the confidence and morale of the victim following methods are used: By communication techniques in which the victim is given wrong information and is tortured mentally. By compulsion or coercion where the victim is compelled or coerced to perform activities or to witness actions that torture him mentally. Forcing the victim to violate social taboos or forcing . By depriving the victim the basic needs like water, food, sleep and toilet facilities which results into disorientation and confusion. Pharmacological techniques like use of various drugs to facilitate torture of the victim to mask the effect of torture and also as a means of torture. Threats and humiliations which are directed towards persons in custody or their family members or friends.

1.3. PHYSICAL VIOLENCE: Following are the methods generally adopted to cause physical violence or torture on the victims:

- Causing disfiguration and exhaustion.
- Causing torture to such an extent that the victim feels fear of immediate death.
- Forcing the victims to sleep on damp floor.
- Making the children stay naked in extreme cold weather or under the sun in temperature for more than 30 degrees. Scratches and cuts are made on different parts of the body with sharp objects.
- Use of irritants like chili powder, table salts etc. are applied on delicate parts or on open wounds.

1.4. SEXUAL VIOLENCE: Sexual violence has great social and psychological impact in the minds of its victims. It may start with verbal sexual abuse and humiliation targeting victims' dignity. It results into rape or sodomy. The violators or the perpetrators of this crime keep devising new means and methods according to their own mental aptitude and imagination to break the resistance of the subject quickly as well as to satiate his/her own urges. Following are the methods of torture still applied by police and other agencies in India: Beating on the spine. Beating with canes on the bare soles of the feet. Beating with rifle butts. Burning with lighted cigarettes and candle flames. Denial of medical treatment. Forcible extraction of teeth. Forcibly lying the victim nude on ice slabs. Hauling the victim on 'airplane' position. Inserting live electric wires into body crevices. Insertion of metal nails under toenails. Public flogging. Submersion in water Suffocation. Victim is crushed under heavy rollers. Victim is stabbed with sharp instruments.

2. ELEMENTS WHICH CONSTITUTE CUSTODIAL VIOLENCE:

- The infliction of severe mental or physical pain or suffering,
- By or with the consent or acquiescence of the state authorities,
- For a specific purposes such as gaining information, punishment or intimidation.

3. THE PROTECTIONS AGAINST CUSTODIAL VIOLENCE UNDER INDIAN CONSTITUTION:

The prohibitions imposed by Article 20 of the constitution are directly relevant to the criminal process. Article 20(1) prohibits retrospective operation of penal legislations. Article 20(2) guards against double jeopardy for the same offence. Article 20(3)² provides that no persons accused of any offence shall be compelled to be a witness against himself. These three clauses may appear to be dealing with different topics or facets. But there is a common thread running through all of them namely the anxiety to ensure that the various facets of the criminal justice system – substantive, procedural and evidentiary shall not be used to oppress the accused person. The common theme is that the administration of the criminal justice system should not be so designed or implemented as to destroy the deeper and moral values of justice itself. The Indian judiciary has expansively interpreted Article 21 requiring all state actions to be just, fair and reasonable. This wide – ranging interpretation has been applied to administrative procedure as well as criminal due process. Article 21 has been read as an injunction against torture and inhuman treatment. Article 21 of the constitution provides that no person shall be deprived of life or personal liberty except according to procedure established by law³. Though Article 21 does not contain any express provision against torture or custodial crimes, the expression – 'life or personal liberty' occurring in the article has been interpreted to include constitutional guarantee against torture, assault or injury against a person under arrest or under custody. Any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an

² KharakSingh V. State of U.P.: AIR 1963 SC 1295: 1963 (2) Cri L J

³ D.K Basu v. State of West Bengal (1997) 1 SCC 416



inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Articles 14 & 21. In the landmark case of *D.K. Basu v. State of West Bengal*⁴, the Supreme court of India observed in this widely publicized death in police custody that using torture to impermissible and offensive to Article 21. The court noted the ubiquity of torture and third-degree methods in police investigations and lamented the 'growing incidence of torture and deaths in police custody' and held: Such a crime-suspect must be interrogated – indeed subjected to sustained and scientific interrogation determined in accordance with the provisions of law. He can't however be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices. The Supreme Court of India ruled that the burden of explaining a custodial death lay on the police rather than the victim. The court granted compensation on the constitutional basis in public law for the infringement of fundamental rights. It referred to its duty to enforce Fundamental Rights under Articles 14, 21 and 32 of the Indian constitution and the need to make the guaranteed remedies effective and to provide complete Justice. Article 21(1) and 22(2) of the Constitution are also relevant for the present purpose, because one of their objects is to ensure that certain checks exist in the law to prevent the abuse of powers. Article 21(1) provides that no person who is arrested shall be detained in custody without being informed as soon as possible of the ground for such arrest, nor shall he be detained the right to consult and to be defended by a legal practitioner of his choice. Article 22(2) provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest⁵, excluding the time necessary for the journey from the place of arrest to court of Magistrate and no such person shall be detained in custody beyond the prescribed period without the authority of a Magistrate. Both the provisions referred to above, have a vital importance to the theme of the present issue. Realizing the essential connection between the provisions of Articles 22(1) and 22(2), the courts have held that the provision of clauses (1) and (2) of Article 22 are mandatory. The practice of torture in prison has been widespread and predominant in India since long time. It is a normal and legitimate practice all over. In the name of investigation the investigation officer torture the individuals. This is not only against the male but also against the female in the form of custodial rape, molestation and other forms of sexual torture. The Hon'ble Supreme court in a case said that the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law. The horizon of human rights is expanding. At the same time, the crime rate is increasing. The court observed that many complaints about violation of human rights because of illegal arrests. A realistic approach should be made in the direction. The law of arrest is one of balancing individual rights, liberties. The executives before giving the order of arrest should think that whether they are law violator or law abider⁶.

4. PROTECTION UNDER THE CODE OF CRIMINAL PROCEDURE, 1973:

The code of criminal procedure, 1973 contains provisions intended to operate as a safeguard against custodial torture. Section 49 provides that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape. Section 57 provides that no police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable and such period shall not, in the absence of a special order of a magistrate under section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the court of the magistrate. Provision of section 57 is mandatory⁷. Section 57A provides that when a person arrested without warrant is produced before the magistrate, the magistrate shall, by inquiries to be made from the arrested person satisfy himself that the provision of sections 56 and 57, have been complied with and shall also enquire and record the time and date of arrest. Section 163 provides that,

(1) No police officer or other person in authority shall offer or make, or cause to be offered, or make, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872⁸

(2) But no police officer or person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will: Provided that nothing in this sub section shall affect the provisions of sub section (4) of section 164. Section 164 provides, Any such confession shall be recorded in the manner provided in section 281 for recording the examining of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:- I have explained to name that he is not bound to make a confession and that, if he

⁴ *Moheela Moran v. State of Assam* (2000) 2 Gau LT 504

⁵ *Rudal Shah v. State of Bihar* (1983) 4 SCC 141.

⁶ *D.K. Basu v. State of West Bengal* (1997) 1 SCC 416

⁷ *Nilabati Behra v. State of Orissa* (1993) 2 SCC 373

⁸ *Laxman v. State of Rajasthan* (2000) 3 Raj. LW 1469



does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

5. PROTECTION UNDER THE INDIAN PENAL CODE, 1860:

Most of the provisions contained in chapter 16 of the Indian penal code (offences against human body) deals with person under custody.

Section 166 of the code reads as under⁹: “Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or fine or both. It may be reiterated that the expression injury covers harm illegally caused to body, mind, reputation or property. Section 167 provides for punishment of a public servant framing an incorrect document with intent to cause injury etc. Section 220 provides punishment to a person with legal authority to confine persons etc. who corruptly or maliciously confines any person, knowing that in doing so he is acting contrary to law. Section 330 of the Indian penal code is specifically addressed to the causing of hurt to extort a confession (though it covers certain other acts also). Section 340 to 348 of the code constitute a group of sections dealing with wrongful restraint, and wrongful confinement and their aggravations. Section 376(2) deals with aggravated form of rape committed by police officers and other public servants. Custodial sexual offences are specially taken care of by section 376C of the code.

6. CONCLUSION:

Police is the machinery which controls crime. If crime takes place in police custody, then we must lean towards some other machinery to curb it. Despite, we have many provisions in our Indian laws, custodial violence continues to exist. It is the duty of the prison administration to provide proper facilities of medical, sanitation, food, security to the prisoners and a monitoring body to only review it but also keep an eye on the other activities inside the prison.

⁹ *Ajab Singh v. State of U.P* (2000) 3 SCC 521;