

Custodial Death: Abuse of Human Rights

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Abstract

As defined in the Oxford Dictionary, custody states that "protection or guardianship of someone or something." In legal terms, "custodial authority" means, at any point in time, when a law administration mechanism refuses the liberty of an individual of movement, such restriction can result from detention, prosecution, or incarceration. During custody, death is a very delicate and sensitive issue, both international and national.

As per NHRC's amended guidelines, complete statements, including autopsy reports, videotapes, and inquiry reports, need to be addressed in the incident's two months¹ⁱ. The autopsy report must be sent in a new format designed by the committee, provided to every appropriate authority, and must be completed promptly and provided within the committee's two months.

Custodial deaths have been covered under Custodial Violence, and the latter denotes violence in police detention and judicial detention. Rape and torture²ⁱⁱ are two other forms of detention violence with dying. The stipulations of Sec.29 of Police Act 1861, Sec.330, 331 and 348 of IPC 1860, Indian Evidence Sec. 25 and 26 and Sec.76 of the CrPC 1973, are numerous provisions incorporated by the legislature to curb and restrain the endowments of the policemen with regards to the custodial investigation.

Introduction

The manifestation of Custodial mortality under the world's greatest democracy has raised every citizen's eyebrows and shaken the very faith in democracy. The international pressure for human right's observance is mounting.

¹Fresh Guidelines issued Regarding Intimation of Custodial Death, National Human Rights Commission India, available at <https://nhrc.nic.in/press-release/fresh-guidelines-issued-regarding-intimation-custodial-death>. (Last Accessed on 9th Sep 2020)

²Custodial Violence in India. <http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html>

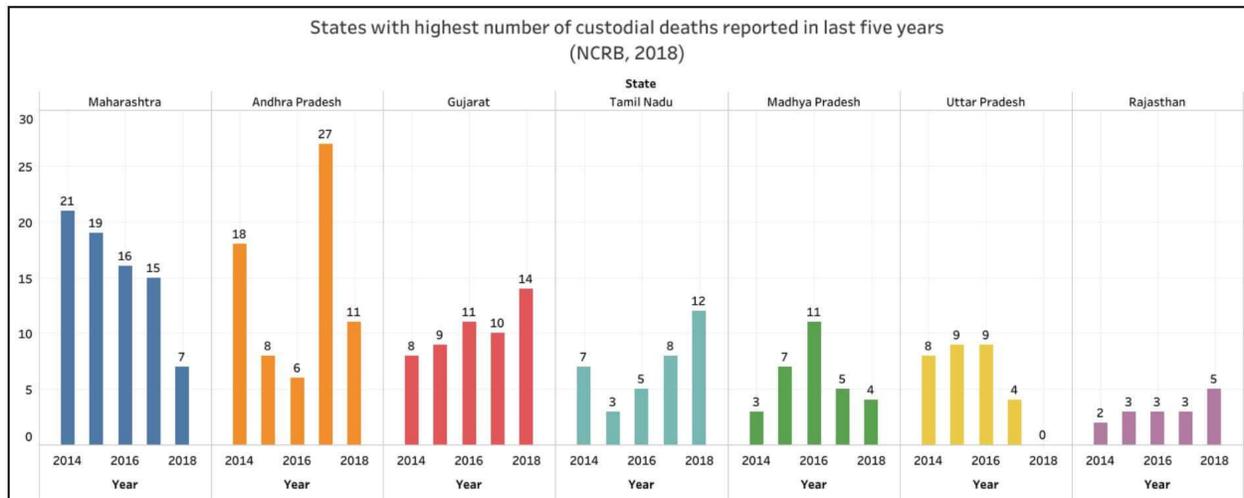


Figure 1: States with the highest number of Custodial Deaths³

SarveBhavantuSukhinah, motto and aphorism, depicts the National Human Rights Commission's core and seeks to achieve happiness, health, and dignity for all through a rights-based system. It seems to be failing in it is an objection. The NCRBⁱⁱⁱ data depicts that no police officer has been convicted in the immediate five years, while between 2014 and 2018, 452 deaths were reported. Still, only 192 cases were registered during this period, and 118 policemen were charged, but no was convicted.

The concept of custodial deaths formulates the routine procedure, confessing from the suspect, and manipulating the truth many times and not considered as something new to Indian society that people are becoming victims of custodial deaths. Since the British arena, prisoners have been exposed to brutal torment in confinement. People have signified divested their fundamental rights⁴.

The precipitous and unanticipated deaths during the detention period are usually associated with the maladministration on the police officials' part, the media agencies' conjecture, hearsay information, and strong community attention. However, it is apprehended that an exhaustive and unprejudiced

³Data: Between 2014 & 2018, No Police Personnel were convicted for Custodial Deaths, Factly available at <https://factly.in/data-between-2014-2018-no-police-personnel-were-convicted-for-custodial-deaths/> (Last accessed on 9th Sep 2020)

⁴Custodial Death and Judicial Response in India, Shodhganga, available <https://shodhganga.inflibnet.ac.in/bitstream/10603/89148/1/17chapter%209.pdf> (Last Accessed on 10th Sep 2020).

evaluation and inspection of the Forensic Pathology Department is accurate, intending to provide specific attributes regarding the justification, reasons, and motive of death.

Guardianship and protective care covered the following aspect, and if it is used to denote incarceration, it will not have any sinister symptoms of violence during detention. No civilized law presupposes the cruelty of incarceration. This inhumane characteristic stems from the improper desire to cause suffering without the chance of retaliation; it transcends the overwhelmingness of hypocritical thinking or the supremacy of collectively angry people, The advantages and material power of the show. It is the most severe crimes in a civilized society governed by law and poses a severe threat to an orderly civilized society. Torture in detention deprives citizens of their fundamental rights and is an affront to dignity.

Every inmate is a citizen and has fundamental social freedoms; moreover, prison torture is a miscarriage of justice. Nevertheless, police play a vital role in safeguarding our lives and freedom, although they must take appropriate action to show respect for the people's human rights, remembering that none is beyond the law and may be held responsible for human rights violations. One can always argue that prisons form an island that cannot be judge freely in a civilization. In this society, the authorities exercise arbitrary power over prisoners' lives where detainees' death is nothing new.

Reasons for Custodial Death

Many incidents have been observed where the accused's arrest took place without any warrant, and police officials have been sentenced to commit custodial death. Such incidents are defamatory for the system because the law has no right to take anyone's life during interrogation. Following the stipulations of Sec.300 of the IPC, provides punishment if a civil servant exceeds his right to use force and causes anyone's death. Besides, Sec.330 mentions that if any civil servant harms anyone to extortion of confession, he will be punished by imprisonment of 7 years.

National law does not provide such arbitrary power to officials; still, custodial violence's persistence increases. Such increment reasons are as follows⁵:

⁵Reasons for Death in Police Custody, Hakim Rai available at <https://ujala.uk.gov.in/files/Ch10.pdf> (Last Accessed on 10th Sep 2020).

1. There were many instances when no proper search had been done of the detained personage before entering the detention center. The detained person perpetrates death under the detention because of nerve cut, hanged, poisoned, or burned.
2. No other illegal interrogation methods should be adopted.
3. Neither exists former preparation for interrogation.
4. Police officers of no significance to interrogation get associated in the interrogation, which is of no relevance. They caused more significant harm to the defendant because they did not participate in the written interrogation.
5. The policemen nor arranged any medical assistance neither instantly inspect the injured defendant, resulting in the detainees' death.
6. Police officers lack patience because they want to plead guilty immediately. If the defendant refuses to admit guilt, they directly use force.
7. Lack of supervision while interrogation by senior officials.
8. This department generally uses the habit of using force. Facts have proved that power against stubborn criminals and force against people with no previous criminal record has been used, following in loss.
9. The imprisoned person commits death in custody because of the police's improper behavior.
10. Disrespect towards others' F.R., and excessively desire to succeed through wrong methods of force.

Methods for Reduction

No accused must remain constrained to any harassment, and custodial death incidents should not happen. The provisions regarding the interrogation procedure are necessary and permitted by our country's law. Still, the policemen conducting the questioning must bear in mind the following points before and during the examination of anyone⁶:

1. The interrogation must be prepared in advance concerning a peculiar and thorough interrogation. The official concerned must make the following preparations before interrogating to circumvent such incidents.
2. The official must be familiar with the incident's minor details to ask the person being questioned the essential questions. Otherwise, he will only be at the hearing.

⁶Reasons of Death in Police Custody, Hakim Rai, available <https://ujala.uk.gov.in/files/Ch10.pdf> (Last Accessed on 10th Sep 2020).

3. He should know the suspect's criminal background so that he can familiarize the offender of the truth when he conceals any fact.
4. He must prepare an initial questionnaire for interrogation to avoid any conflict, as it is impossible to prepare the questions during interrogation.
5. Interrogation must be conducted in an isolated place to conduct in-depth and thorough interrogation.
6. The interrogation must be continuously conducted without any interruption to avoid giving an occasion to suspect to change his mind to encase the facts.
7. Interrogation must hold separately if more than one suspects prevent them from hearing the other co-defendant's statement. Otherwise, the offender is anticipated to modify his statement.

Landmark Judgements

The evolution of Custodial Jurisprudence was instituted in '**D.K Basu v. State of West Bengal AIR 1997 S.C. 3017**⁷'. An NGO filed the case following Article 32 of India's Constitution. India's Chief Justice notices, piece of news published in The Telegraph about custodial mortality in Bengal. In this petition, an in-depth review and the development of custody jurisprudence are required. Following mandatory preventive measures has been outlined.

1. Following the code's stipulations, police officers must manage the case fairly and correctly after an arrest and then investigate it.
2. They must prepare a memorandum and follow all procedures. The defendant has the right to inform his known.
3. Police should assign arrest's notice to family members or friends within 8 to 12 hours after the arrest.
4. Officials should keep diaries mentioning the arrest's details other necessary information regarding the detained person's family.
5. He should further be examined about any severe or minor injury. The detainee and the policeman who influenced the arrest must sign an "inspection memorandum" and represent this on the detainee.

⁷D.K Basu v. State of West Bengal, 1996 available at <https://indiankanoon.org/doc/501198/> (Last Accessed on 10th Sep 2020)

6. Copies of every prescribed document (including arrest warrants) must be conveyed to the court.⁸

The court aimed that the initial requirements came from Article 21 and Article 22(1) of the Indian Constitution and strictly observed. In **Nilabati Behera v. the State of Orissa (1993) 2 SC 746**, arrested and imprisoned, it has not denied their fundamental rights provided under Art. 21, and only the restrictions authorized by an authority can be imposed.

The court observed in **Prem Shankar v. Delhi Administration (1980) 3 SCC 302**, highlighted Art.5 of the UDHR and held that if not any other reasonable methods are available to prevent prisoners from escaping, the prisoners should be handcuffed. Otherwise, handcuffing in the standard scenario while the detainee himself surrender is unconstitutional. He reiterated Art. 21 of India's Constitution that the sanctuary of human values now stipulates fair procedures, prohibiting brutality, punitiveness, and procedurally.⁹

In **ADM Jabalpur v. Shiv Kant Shukla (1976)**, Judge H.R Khanna denoted that a person will never be deprived of his F.R. to life and personal freedom. The word life has another meaning, non confined to existence.¹⁰

In **R.P Kapur v. Punjab (1960)**, an official rendering investigation should perform his duties without any cruel and heinous methods. The entire function must adopt a reasonable plus systematic approach.

Overview of Tamil Nadu's Case

Recently, the custodial death of father-son's in Tamil Nadu, amid the lockdown, has left the nation disturbed and traumatized. P. Jayaraj, 62 years old, and his son Benicks, 32 years old, owned a mobile gallery shop at the Town Santhankulam, were confined supporting the allegation of opening their shops after the permissible hours of the lockdown. An argument took place between officials

⁸Ibid

⁹Prem Shankar Shukla v. Delhi Administration 1980 AIR 1535, available at <https://indiankanoon.org/doc/853252/> (Last Accessed on 10th Sep 2020)

¹⁰ADM Jabalpur v. Shiv Kant Shukla, 1976AIE 1207 available at <https://indiankanoon.org/doc/1735815/> (Last Accessed on 10th Sep 2020)

and Benicks regarding the misconduct and physical harassment by police, and officials thrashed both due to clash, and the detainees' family meet them at the sanatorium.

While the media sources, Jeyaraj and Benicks's bottom wear, were soaked in blood, they had to always change their wear due to severe bleeding. The police urged the house to bring "dark bottom wear." After three hours in the infirmary, both were presented before Sathankulam District Court and later kept in remand in Sub Jail, Kovilpatti for few hours¹¹.

Until 22nd June's eventide, the family knows about transferring detainees to a government hospital. Due to continued bloodshed and severe internal and external injuries caused by officials' brutality, Benicks died late on 22nd Jun, and his father died on 23rd Jun.

Judiciary's Role

The Madras H.C attained the Suo Moto Cognisance and determined to observe the progress of the investigation by the statutory Magistrate. The department has been instructed to present a situation record and videographed the autopsy. Chief Minister Edapadi K. Palaniswami announced Rs 20 lakh compensation, while two deputy inspectors were suspended, and one inspector was on mandatory wait. The police officers' mere suspension is a full acknowledgment to law enforcement agencies' extremely erroneous power abuse.

A Convention of Knowledge and Simplicity

Analysis

The police are notorious for their mastery and tertiary torture methods, and the superior administrators have called it a normative practice for decades.

The mere suspension depicts the arbitrary power of the law administration agency. The question of custodial death or not persists, while the case has been transferred to CBI on the appeal, but prima facie, it was an act of brutal revenge for the remarks delivered through the deceased against officials.

¹¹Thoothukudi Custodial Deaths: All you need to know, The Times of India, available at <https://timesofindia.indiatimes.com/india/tamil-nadu-custodial-deaths-all-you-need-to-know/articleshow/76707406.cms> (Last Accessed on 10th Sep 2020)

Although every class in society is concerned about custodial deaths, the cases increase despite the increasing literacy rates. Hence, the need of the hour to ascertain the causes that dominate the institution and lead to detainees' abuse.

Conclusion

It is said that it is among the most serious crimes that a democratic and educated nation can see. The question which prevails is, "when the police arrest someone, does it mean that the citizen has lost his basic right to life"? The answer is in negation. Crime should indeed be controlled, but a realistic approach must be adopted for this. An appropriate method to balance the basic fundamental rights granted to humankind and social interests and positively respond to crimes without denying anyone's rights is necessitated.

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