
CRITICAL ANALYSIS OF CUSTODIAL VIOLENCE AND ROLE OF JUDICIARY IN INDIA

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ABSTRACT

Custodial Violence is the worst type of human right violation which violates protections guaranteed under the Constitution of India 1949, Universal Declaration of Human Rights 1948, Convention against Torture and Other Cruel Inhuman or Degrading Treatment of Punishment, 1984, The European Convention on Human Rights and Fundamental Freedoms 1950 and other International Covenants. In a democratic country like India it's the duty of Police officials to safeguard the rights of every citizen but this not the case in India dehumanizing torture is alarming the serious question about the credibility of law. By means heinous torture towards the arrestee which creates a form of mental and physical impact to the person. The most vulnerable among them sexual harassment against women who lodged to raise complaint towards the Police. Due to the rising number of custodial violence cases Law Commission and Courts have initiated certain guidelines and recommended the need of special legislation to curb custodial violence. Through this paper researcher make a study on custodial violence its impact on individuals, certain statute which protect the right of arrestee and certain preventive measures for the issue.

Introduction

Custodial violence can be defined as violence faced by the arrestee in police custody. No person shall be deprived of his liberty except with authority of law. Police officials must act upon their limits inhuman act of custodial treatment must not be acted upon the arrestee even they right to dignified treatment under the law. Torturing a person who is both helpless and in No position to retaliate with the goal of extracting information is a rather reprehensible manner of investigation and crude way of detecting crime.¹ Legal system in India is facing very challenging problem in case of custodial violence. Supreme Court in many cases have criticised and mandated guidelines to curb the issue but it's very disturbing that custodial deaths are increasing drastically. Through this general public loose the trust on public officials and even on criminal justice system. In Gauri Shanker Sharma etc. v. State of U.P.². *"...it is generally difficult in cases of deaths in police custody to secure evidence against the policemen responsible for resorting to third-degree methods since they are in charge of police station records which they do not find difficult to manipulate as in this case. ...The offence is of a serious nature aggravated by the fact that it was committed by a person who is supposed to protect the citizens and not misuse his uniform and authority to brutally assault them while in his custody. Death in police custody must be seriously viewed for otherwise, we will help take a stride in the direction of police raj. It must be curbed with a heavy hand. The punishment should be such as would deter others from indulging in such behavior. There can be no room for leniency."*

Menace of Custodial Violence

Custody defined as any point in time when an individual's freedom of movement has been denied by law enforcement agencies, or during arrests, prosecution, sentencing, and correctional confinement (Gill, Koelmeyer, 2009)³ but according to dictionary meaning is, the legal right and duty to care of someone. "Violence" means the behaviour of someone which harms or damage physically or used energy and in layman's language is 'cruelty', 'atrocities', 'hurt'. The worst type of human right violation is custodial violence it's because custodial

¹ Bhagwan Singh and another v. State of Punjab, 1992 AIR 1689 SCR (3) 180.

² Gauri Shanker Sharma etc. v. State of U.P. AIR 1990 SC 709.

³ Jespal Gill, Timothy D Koelmeyer, Death in custody and undiagnosed central neurocytoma, Am J Forensic Med Pathol 2009 Sep;30(3):289-91.

violence occurs when an innocent person is arrested by police officer for speedy disposal of case or any other matters they have become the perpetrators of torture and inhuman treatment.

Torture- Torture is not only limited to Physical injury it can also include forcing the person to remain in a particular stressful position for a long period of time, forcing that person to hear high amplitude noises, denying them adequate food water and sleep⁴. India is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, 1984 from 14 October, 1997 overall objective of the convention against torture is to prevent torture and effective remedies are available to victims. As a signatory to the convention India is bound by the convention and to ratify the same but even after a decade it has not seen the light of ratification.

Prevention of Torture Bill, 2010 was introduced in Lok Sabha. The Bill defines the word torture as grievous hurt if a public servant tortures any individuals for deriving information or making his confession by torturing his life, limb, and health such circumstances punishment shall be for 10 years against the government officials.

Torture ruin the life of the individual which create a long lasting effect in mind of victim. Under the four walls of police custody intentionally commits third degree torture to confess the matter. According to international standards for protection, torture can be inflicted not only via physical violence but also through acts that produce severe physical, psychological, or moral suffering to the victim.⁵ In *Arvinder Singh Bagga v. State of U.P*⁶ court has extended the scope of torture from physical sense to mental as well as psychological sense which is intended to frighten the person and to force him to submit to the demands or the orders given by the authorities.

Sexual Harassment- Sexual harassment includes unwelcome sexual advances, requests for sexual favours, and other verbal or physical harassment of a sexual nature. In Mathura rape case where a young tribal girl was raped in police custody Sessions Court held that police officials was not guilty as the girl did not raise any alarm and was habituated to sexual intercourse, Supreme Court have acquitted the policemen as there was no suggestive evidence of rape which lead to massive outbreak of public which ultimately resulted to Criminal Law Amendment, 1983 by amending Rape under Section 375 and Section 376(1) punishes custodial rape

⁴ Selmouni v. France, Application No. 25803/94, Judgment of 28 July 1999.

⁵ Cantoral-Benavides v. Peru, the Inter-American Commission, Judgment of August 18, 2000.

⁶ *Arvinder Singh Bagga v. State of U.P* AIR 1995 SC 117.

committed by police officers under Indian Penal Code, 1860. Under Section 114A Presumption as to absence of consent is considered as rape.

Violation of Human Rights- Custodial violence stems from the act of abuse of power by the police is a cause of concern to not only the affected person but also to the society at large. Custodial violence and abuse of power by the police is a cause of concern; to protect the human rights of prisoners. Police cannot be allowed to accomplish behind closed doors what the general public order and the law forbids.⁷ Article 21 of the Constitution of India guarantees an individual the right to life with dignity and personal liberty. Constitution mandate to protect human dignity of every individual, it's the responsibility of the police officer to protect the life and dignity of every detainee. 177th Law Commission Report (2001) commission recommended inserting Section 55A to the Code of Criminal Procedure, 1973 imposes obligation to the police officer to take care of the health of arrested person.

Statutory provisions protecting custodial violence

➤ The Code of Criminal Procedure, 1973

Section 46 and 49 guards those criminals against torture and other barbaric treatment who are not accused of an offense punishable with death or imprisonment for life and also during the escape. Section 54 of the code exclusively deals with any infliction of custodial death and torture. Section 176 asks for a compulsory inquiry by a judicial magistrate in case of the death of an accused in police custody.

➤ The Indian Evidence Act, 1872

Section 24, 25 and 26 of the Indian Evidence Act exclude certain confessions caused by inducement, threat or promise is irrelevant under the criminal proceedings also confession to police officer and confession by accused in police custody cannot be proved against him.

➤ The Indian Penal Code, 1860

Section 330, 331, 342, and 348 of The Indian Penal Code are specially designed to stop a police officer from using third-degree torture treatment. If a police officer is liable for the death of an accused in the course of police custody in such case police officer would be punished under Section 302 of the Indian Penal Code also in case of culpable homicide not amounting to murder police officer would be liable under Section 304.

⁷ Supra 2

➤ Indian Police Act

Section 7 and 29 of the following act lays the provision for dismissal, penalty or suspension of penalty or suspension of police officers who unethically discharge their duties or are unfit to perform their duties. This prevents the police officers from violating the various constitutional and statutory provisions.

Constitutional Safeguards

The Constitution of India have recognized the rights of prisoner's even they are treated as dignified citizen of India. Constitution have limited the powers of the authorities and provided safeguard for the scope of custodial violence. Article 14 Equality before law every person must be treated equally before law. Therefore even prisoners must be treated in a dignified manner before the law. Article 20 protects in respect of conviction of offences under this article the right against ex post facto laws, double jeopardy and freedom from self-incrimination are protected. Article 21 right to life and personal liberty thus torture, assault, rape or injury against a person is been protected. Article 22 Protection against arrest and detention without being informed about the grounds of arrest.

In case of violation of fundamental rights any person can file a writ petition under Article 32 or 226 to the Supreme Court or to the High Court respectively. The Constitutional Courts are the sentinels of justice and have been vested with the extraordinary powers of judicial review to ensure that the rights of citizens are duly protected.⁸

International framework for the protection of Custodial violence

Growing incidents of abuse of power by public official is a threatening issue not only in national level but also even in international level. During World War II custodial torture was in a grave peril. Thus, it has been concern of international community to bring an effective and solid legal framework to eradicate the issue.

➤ Universal Declaration of Human Rights, 1948

United Nations General Assembly adopted Universal Declaration of Human Rights which is a milestone document in the history of human rights. Article 1 All Human being are born free and equal in dignity or in rights. Article 3 mentioned that everyone has right to liberty, life and

⁸ Manohar Lal Sharma v. Principal Secretary, (2014) 2 SCC 532: LNINDORD 2017 SC 6549.

security of person. Article 5 everyone has right not to be subject of torture, cruelty, inhumanity, ill-treatment or punishment. Article 6 everyone has right to be recognized as a person before law. Article 9 everyone has right not to be subject of arbitrary arrest, detention or exile. Article 10 everyone has right of full equality regarding trial such as fair trial, public hearing and impartial trial and guarantee for his defence. Article 11 every person has right to be treated as innocent person before of law until guilt is proved of that person; and provide no punishment before law for such act, omission which is not offence at that time under any law and not imposed heavy penalty which should impose when offence is committed.

➤ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, 1984

It is one of the first document which deals with prevention of torture at international level. Convention prohibits torture in a global level by monitoring the governments to make them accountable. The word torture has been defined under Article 1 which means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

➤ The European Convention on Human Rights and Fundamental Freedoms, 1950

Torture, Inhuman or degrading treatment of people is banned under the European Convention on Human Rights. The European Court of Human Rights has highlighted the torture of innocent civilians, unlawful police shootings and inhuman conditions of detention. Judgments from the European court have led states to introduce proper rules and systems of accountability which prevent torture and ill-treatment.⁹

➤ Declaration on Protection from Torture, 1975

Article 2 any act related to torture, inhumanity, ill-treatment or punishment is an offence against human dignity and it shall be a conduct against the object of charter of United Nation and violation of Human Rights and Fundamental Freedom given by Universal Declaration on

⁹ Impact of European Human Rights, Council of Europe <https://www.coe.int/en/web/impact-convention-human-rights/freedom-from-torture-and-ill-treatment>

Human Rights. Article 3 not a single State allows the torture, cruelty, ill-treatment with human, inhumanity or punishment. But there are some exceptional cases where such act related to torture, inhumanity, and cruelty may be justified and these cases are state of war, threat of war, political instability and other public emergency.

➤ Standard Minimum Rules for the Treatment of Prisoner, 1955

In 1955, United Nation Congress on prevention of crime and treatment of offender for first time adopted the Standard Minimum Rules for Treatment of Prisoners. It provides no discrimination on the basis of sex, colour, gender, religion, political, opinion, national or social origin, property, birth or status among prisoners. Prisoner's authorities are made-up to respect the religions belief of prisoners.

Judicial responses

➤ Rudul Shah v. State of Bihar, 1983¹⁰

Petitioner was kept illegally in jail for 14 years habeas corpus writ was filed and his immediate release was demanded this case is important because for the very first time Supreme Court realized that if by any state any individuals constitutional rights is been violated then the individual will get compensation.

➤ State of U.P v. Ram Sagar Yadav, 1985¹¹

A farmer falsely accused of cattle trespass by his neighbor over a dispute was allegedly threatened for bribes by the concerned police officer, who then, at first, relented but then reported this incident to the police station, which as a response appointed another officer to inquire into the farmer's allegation against the officer. The police officer in charge of the inquiry arrested the farmer and tortured him severely; within 6 hours of registering the initial case, the farmer then succumbed to his injuries and died. This matter was then taken up by the Apex court, which then acknowledged the advent of custodial death and torture as well as the indemnity enjoyed by police officials, saying, "Police officers alone and none else can give evidence regarding the circumstances in which a person in their custody comes to receive injuries. Bound by the ties of brotherhood, they often prefer to remain silent in such situations, and when they choose to speak, they put their own gloss upon facts and pervert the truth."

¹⁰ Rudul Sah v. State of Bihar, (1983) 4 SCC 141.

¹¹ State of U.P v. Ram Sagar Yadav, 1985 AIR 416 SCR (2) 621.

➤ Saheli v. Commissioner of Police, 1989¹²

In this case police along with the zameendar misbehaves with the rented mother and her 9 year old child which lead to the death of the child. Supreme Court compensated the mother by awarding Rs75000 also court gave an option to Delhi Administration to recover the amount by the police officer who is responsible for the incident.

➤ Nilabati Behera v. State of Orissa, 1993¹³

In this case Suman Behera was arrested by police and the very next day her body was found on railway track with multiple injuries and the petitioner was awarded by a compensation of Rs 1,55,000.

➤ Joginder Singh v. State of UP 1994¹⁴

Supreme Court held that if any arrest is made without any justification then it will be an illegal act, there must be reasonable justification for arrest.

➤ D.K. Basu v. State of West Bengal 1997¹⁵

The executive Chairman of Legal Aid Services, which is a non-political organization registered under the Societies Registration Act, wrote a letter to the Chief Justice of India, to raise concern over the matter of recent deaths and violence which were being reported in the police custody and lockups. The letter was treated as a writ petition when it was filed before the Supreme Court of India. Shri Ashok Kumar Johri addressed the letter to the Chief Justice of India by highlighting the death of a person named Mahesh Bihari of Aligarh in Police custody. In this case, petitioners also raised concerns over the police powers. Compensation should be given to people if there is any infringement of their rights mentioned in Articles 21 and 22 of the Constitution. Supreme Court held that Custodial violence is an attack on human dignity. Court also recognized that even after several recommendations and policies custodial violence cases are still increasing. Apex Court mandated to follow certain guidelines adhering to Articles 21 and 22(1):-

- i. Police officer must accurate and correct information about the accused and also all particulars of the police official who handle the investigation.

¹² Saheli v. Commissioner of Police, 1989 AIR 513 SCR 488.

¹³ Nilabati Behera v. State of Orissa, AIR 1993, SC 1960.

¹⁴ Joginder Singh v. State of UP 1994 AIR 1349 SCC (4) 260.

¹⁵ D.K. Basu v. State of West Bengal 1997 (1) SCC 416.

- ii. Memo of arrest shall be signed by a witness who can be either family member of the arrestee or any locality person with sign of arrested person with date and time.
- iii. Arrest details shall be informed to family member, relatives or friends. If they lives outside the town then they shall be informed through Legal Aid Organisation in district or police station within 8 to 12 hours after arrest.
- iv. The arrestee shall be aware of his right and reason of his arrest also arrestee is entitled to meet his lawyer.
- v. Medical examination of arrestee shall be conducted every 48 hours by a certified doctor appointed by Director Health Services of State or Union.
- vi. Diary of entries maintained must contain the name and details of nearest friend of the arrestee.
- vii. Police control room should be provided at all district and state headquarters where information regarding the arrest and the place of custody of arrestee shall be communicated by the officer causing the arrest within 12 hours of arrest and it should be displayed on notice board.

➤ *Yashwant and Others v. the State of Maharashtra, 2018*¹⁶

The Supreme Court upheld the conviction of nine Maharashtra cops in connection with a 1993 custodial death case and extended their jail terms from three to seven years each. Court held that incidents that involve the police tend to erode people's confidence in the criminal justice system. The Police personnel was found guilty under Section 330 of the Indian Penal Code, which involved voluntarily causing hurt to extort confession.

Recommendations and Suggestions

Custodial violence is a heinous act which includes physical, mental, sexual harassment and fake encounters. This violate the human dignity which is mandated by the most prestigious statute book of our nation. Strict implementation of guidelines mandated under *D. K Basu* judgment must be practised. Prevention of Torture Bill, 2010 must be enacted with provisions for granting compensation for torture victims and proper authority to investigate complaints of torture must be inserted.

¹⁶ *Yashwant and Others v. the State of Maharashtra, 2018*4MLJ (CrI)10(SC)

National Human Rights Commission, New Delhi, 2000 provides certain guidelines regarding to pre- arrest, arrest and post- arrest which must be adopted by all State government. 273rd Law Commission Report must be implemented to Criminal law that in case a person in police custody sustain injury burden of proof must lie on the police officials and stringent punishment to the perpetrators must be imposed in order to curb menace of torture.

Police officers are accountable to the public for their protection of life and liberty therefore strict norms must be established to curb their brutal and heinous acts. Police personnel's must get proper training to handle psychological and social situations, they must be sensitised towards fundamental rights of the people.

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