

Law of Torts in Reference with Custodial Deaths in India

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Abstract

Article 21 of the Constitution of India says that no person shall be deprived of his life or personal liberty except according to procedure established by law. Right to life is a fundamental right and its scopes are widen to the extent of life full of dignity mandatory for soulful human existence in a society whereas the personal liberty of an Indian citizen is taken care of by Article 22 which provides that the arrested person should be informed about the grounds of his arrest and should be produced within 24 hours of his arrest before magistrate. "Liberty is the most cherished possession of man. "The protection of life and liberty and protection from or against arrest of a citizen are contained in our constitution. Apart from the Constitutional laws there are several other laws and legal enactments framed with the purpose to protect the fundamental right to life and liberty of an individual. In this research paper, firstly, the researcher tries to define custodial death, relevant laws in the Constitution of India and other enactments, landmark judgments on custodial deaths, facts and figures of ratio of custodial deaths in India as per NHRC, India's initiative in policy formulation against custodial violence. The article also attempts to analyze the need of the hour for formulation of strong enactments and policies to curb the malpractice of custodial violence to cut the root of heinous crime of custodial deaths.

Keywords: Custodial Death, Article 32, Indian Constitution, Compensation, Public Law, Private Law, Article 21, Right to Life

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INTRODUCTION

Custodial death is one of the most heinous crimes committed on the land of Lord Mahavir, Buddha and Mahatma Gandhi, the greatest preachers of non-violence and peace on the globe. Custodial death is not a natural death, in fact its direct attack on the fundamental right to life (Article 21 of the Constitution of India) that too after crushing the dignity of the individual brutally. Custodial death/ killing is wretched offence in terms of Human Rights Laws too. The Article 21 of Indian Constitution provides right to life and personal liberty' encompasses all basic conditions for a life with dignity and liberty. Article 22(2) contains the provisions that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of the arrest to the Court of the Magistrate. In *Kharak Singh Vs. State of U.P.* [1] the Apex Court held and expanded the

connotation of the term 'life' and said" ... Life is something more than mere animal existence. The inhibition against its deprivation extends to all 427 those limbs and faculties by which life is enjoyed [2]. Section 76 of Code of Criminal Procedure, Sections 330, 331 and 348 of Indian Penal Code; Sections 25 & 26 of the Indian Evidence Act; and Section 29 of the Police Act, 1861 has been enacted with purpose to check the tendency of policemen and judicial officers to exercise torturing the person/accused under custody to extract confessions etc.

Overcrowded cell, pathetic living conditions and lack of proper food and medical care are few common factors leading to police and judicial custody death, but custodial violence is the most prominent factor responsible for deaths in prisons and lockups. The custodial violence contains various type of torture, third degree, harassment, brutality, use of force not warranted by law, etc. but also include illegal

detention, arrest which is wrongful or on insufficient grounds using third degree method, on the suspects, assaulting them, using inappropriate language, prohibiting suspect from sleeping, extorting confession under pressure, misusing the power etc. The torture or third degree in the most prominent form of custodial violence by the police and main cause of custodial deaths.

MEANING AND EXPRESSION

Custodial Death contains two basic words (1) "Custody", is a word which has root in Latin "*Custodia*" (guarding, keeping, watching, protecting), which means "to watch or keep or guard". In legal terms Custody means imprisonment or legal restraint. (2) "Death" meaning end of life of a person or organism. Custodial death here means end of human life while in prison or under legal restrained. Custodial death primarily refers to death either in police custody or in judicial custody.

LANDMARK JUDGMENTS IN CASE OF CUSTODIAL DEATHS

In *Nilabati Behera Vs. State of Orissa* [3], it was held by the Apex Court that *prisoners and detainees are not denuded of their fundamental rights under Article 21 and that it IS only such restrictions as are permitted by law, which can be imposed on the enjoyment of the fundamental rights of the arrestees and detainees. It was further observed" ... there is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.* The Honorable Court awarded the mother of the deceased, a compensatory number of Rupees 1.5 lacs (Rupees One Lac Fifty Thousand Only) who died in police custody. Article 9(5) of the International Covenant on Civil and Political Rights was also taken by the Court as a reference in the said case, which indicates that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

In *Bhajan Kaurv. Delhi Administration through the Lt. Governor the Delhi High Court* while determining the scope and width of Article 21 37 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 an individual is safe and is given supreme importance and value. 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 *Kuldeep Singh vs State* [4], *Delhi High Court* upheld the conviction of six Policemen belonging to the Special Staff of the Delhi Police for the custodial death of one Dalip Chakraborty in 1995. Hearing the Appeals filed by the officers, the Bench referred to the Supreme Court decision in the case of *D.K. Basu v. State of West Bengal* [5], wherein detailed guidelines were laid down to prevent instances of custodial violence.

FACTS AND FIGURES BY NHRC (NATIONAL HUMAN RIGHT COMMISSION)

According to annual report 2015-2016 by National Human Right Commission, it received 1,670 intimations concerning death in judicial custody, 152 intimations of death in police custody, and one intimation of death in paramilitary / defense forces custody during the year 2015-16. It disposed of 1218 cases of custodial death, 1,080 cases of death in judicial custody, 131 cases of death in police custody and 7 cases of death in the custody of para-military forces/defense forces. Custodial violence and torture continue to be rampant in the country. It represents the worst form of excesses by public servants entrusted with the duty of law enforcement [6].

INDIA'S INITIATIVE IN POLICY FORMULATION AGAINST CUSTODIAL VIOLENCE

In 2016, the former Union minister of law filed a petition in the Supreme Court for India's compliance to United Nations Convention Against Torture (UNCAT). During the hearing of the case, the Law

Table 1: Illustration of data related to torture during Police Custody in India.

| Year | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
|---------------------------|---------|---------|---------|---------|---------|---------------------|---------|
| Torture in police custody | 678 | 366 | 303 | 431 | 493 | 293 (till 31.10.16) | NA |
| Death in police custody | 128 | 143 | 140 | 130 | 153 | 145 | 144 |
| Death in judicial custody | NA | NA | NA | 1,588 | 1,668 | 1,616 | 1,530 |

Commission of India submitted its 273rd report recommending government to ratify the UNCAT and also proposed the Prevention of Torture Bill 2017. In response to a question asked with regard to steps taken to prevent custodial cruelty, in Parliament in March 2018, the Ministry of Home Affairs responded that the government has proposed amendments in Sections 330 and 331 of the Indian Penal Code (IPC). The data related to torture during Police Custody in India is illustrated in Table 1 [7].

On strong recommendations made by NHRC, Law Commission of India, and the Apex Court, a new Bill has been drafted as “**Prevention of Torture Bill, 2017**”. Though the bill has few major loopholes, still it raises a hope in the heartland of democracy, a mechanism to curb custodial violence and provide justice to the families of the custodial death victims.

CONCLUSION

There’s strong need to reinforce contraption in relation with the provisions for mandatory immediate cognizance by the District Magistrate for magisterial enquiry in every custodial death case. Secondly, a well-developed knowledge transfer platform needs to be established for acknowledgment of laws and recommendations pertaining to custodial deaths, punishments in case of custodial death or violence among the police organizations. Every judicial officer including the District Magistrate must become consciously alert and active to prevent the malpractice of custodial violence. Mentally or physically ill prisoners or accused should immediately be referred to the hospital for proper medical treatment. All the senior police officers must take responsibly for strict compliance of all the

legal provisions among their subordinate officers to check the unfortunate incidences of custodial violence or death. Recommendations and reports from committees and commissions like NHRC be made expeditious. National Police Commission’s recommendations and suggestions regarding keeping check on deaths in police lockups, be implemented promptly without delay.

No authority in the democratic country India is empowered to inflict brutality on a helpless or weak person under its custody ignoring the ‘canons of law’. India firmly believes in rule of law and has distributed the sovereign powers in the hands of its citizens. Nobody is above the law of land in our country and time is exclaiming to raise alarm against violation of Article 21 of the Constitution of India.

REFERENCES

1. AIR 1983 SC 83
2. Sukhla V. N., Constitution of India. Eastern Book Compnay, 10th edition. (2001). reprinted (2007), Lucknow, p 827-854
3. (1993) 2 SCC 746
4. 14 December 2017, Delhi High Court
5. (1997) 1 SCC 416
6. NHRC Annual Report 2015-2016
7. http://nhrc.nic.in/sites/default/files/NHRC_AR_EN_2015-2016_0.pdf; P 35
8. Article by Ms. Baljeet Kaur; <https://www.epw.in/engage/article/indias-silent-acceptance-torture-has>

Cite this Article

Niddhi. Law of Torts in Reference with Custodial Deaths in India. *Journal of Law of Torts and Consumer Protection Law*. 2018; 1(2): 5–7p.