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Custodial Death & its Impact on Indian Criminal Justice System

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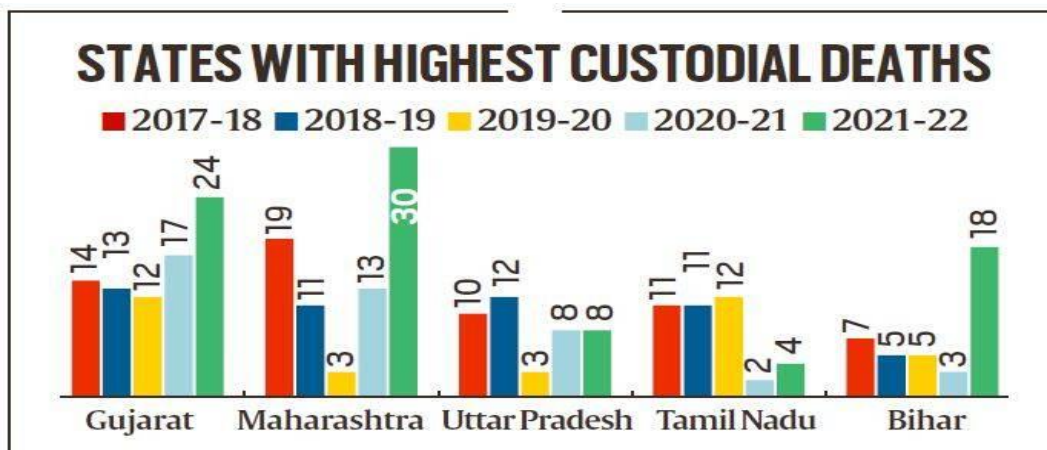
Abstract

Custodial death is a direct attack on the dignity of an individual as well as the Criminal Justice System functioning in the country. A living human body is an asset and an ultimate resource for development of any country and a threat to its mental and physical wellbeing through atrocities can harm the overall trust on authorities safeguarding by the society. This paper deals with the stereotypes related to custodial death in India and an approach towards moral policing and its reformation. This paper aims to protect the basic rights of the citizens of this country by safeguarding rights of the prisoners as well as the authorities responsible for their protection and safety. Over the past few years, this topic has raised a major concern among the citizens as well as mainstream media. The term 'Custodial Death' leaves a stigma behind in the lives of larger segment of the society especially in the heart and mind of the families of the victims. It also drags down the trust and efficiency upon the policing system responsible for public peace and safety. A major concept of Indian Criminal Justice System relies upon the Policing system of the country and its authenticity plays a major role in deciding what is right and wrong. This paper will try to outline a very fine margin between the stereotyping of Custodial Death and an idea towards its reformation morally, ethically & legally.

Keywords: *Custodial Death, Moral Policing, Reformatory approach, Media trials, Police Custody, Judicial Custody*

Introduction

In January 2024, Gujarat HC upheld the life sentence conviction of former IPS Officer and a Constable in a 1990 case of alleged custodial death and torture. The Gujarat HC also paid emphasis upon the less conviction rate in Custodial death cases, meanwhile this sparked a debate among the citizens about Custodial death and torture. The Police is a State subject and every State has its own Police force in order to maintain law and order of the State. It is rightly said that, “with great power comes greater responsibility” and so does the Policing system have so much of duty to fulfill. There have also been numerous instances where Police officers have crossed boundaries and committed this inhuman task of custodial violence & torture resulting in Custodial death of a Prisoner. In order to prove themselves before the judiciary, Police sometimes arrest people from lower and marginalized section of the society with malicious intentions and in order to extract information during investigation the arrested person faces violence and atrocities. This type of modus operandi sometimes backfires and the public loses faith and trust upon the Police system. Law Commission in its report has also observed that majority of the victim of torture comes from weaker and marginalized section of the society.



Supreme Court and various High Courts of the country have at times delivered landmark judgments under the ambit of Article 21 of the Constitution of India that, “Right to live with dignity is the foremost and undisputed Fundamental right a citizen of this country gets”. Custodial Death is a clear violation of the dignity of human beings. NHRC in the year 2021-22 reported 2150 cases of custodial death in the country.

Violence against inmates is not a recent development. It is known to have existed at various points throughout global history, in one way or another. It's just that it's become a very important and crucial subject in recent years. It's a virus and an illness developing in the same body. Custodial violence has become a major human rights concern in the modern world and one of the main roadblocks to democracy and the advancement of human well-being. The physical and mental well-being of the victims, their offspring, families, communities, and society at large are all severely harmed by custodial abuse. A challenge to the legal, medical, and other professions, the word "torture" has come to represent the evil side of human civilization. In the present world, torture and death while in custody are not novelties. It has long been understood. However, the misuse of authorities granted by the Constitution and other laws,

together with custodial brutality, has brought serious human rights concerns to light and is blocking the progress of democracy in modern society. It has terrible impacts on people's social and mental functioning as well as their physical and mental health, as well as the health of their families, communities, and society at large. Here, we also need to acknowledge an important point that there can be numerous other reasons as well behind the death of any prisoner in custody. The death can be either through torture, killing by prison inmate, suicides, health reasons and so on. This issue needs to be dealt with great concern and sensibly. One single authority which is responsible for a proper and smooth functioning of the society cannot be blamed for the consequence of custodial death solely. Custodial violence, atrocities, death and rape needs proper legislation and guideline for its protection and judgments cannot solely set up an example for its reformation.

The Indian Police force faces a challenging and delicate task in light of the country's stringent law and order system dealing with political unrest, protests, media trials.

Recently Madras HC said, "few police officers think that they can extract information only by way of torture and atrocities and this approach needs to be mended". Punjab and Haryana HC have also observed that, "custodial deaths results in reprehensible abuse of power". Justice Manjari Nehru Kaul also laid emphasis on the fact that, "the loss of life while in custody raises grave concerns about accountability/transparency and the very foundation of rule of law.

Reformative Approach Towards Significant Police & Judicial Custody

It is quite clear from the introductory part that, death of a prisoner amounting while he is under custody results in custodial death of any prisoner.

Mainly, there are two types of Custody: - Police Custody and Judicial Custody. It is a well-known fact that Police needs to present the accused before a magistrate within 24 hours of his arrest and thereafter he is being transferred to the jail (i.e. judicial custody). Prior medical of the accused is also being done with the help of doctors and after medical it becomes impossible that the accused person faces any kind of torture. The Police officers with malicious intention sometimes delay the paper work of arrest and medical in order to extract information through police torture which is against the principle of moral & ethical policing. Recently, few officers of 48 Rashtriya Rifles (a prime regiment of Indian Army) were accused of killing 3 villagers of Topa Peer (a village in Poonch sector of Kashmir). All three belonging to Gujjar-Bakarwal tribe, a tribe which is so close to Indian Army proving their loyalties every time in numerous operations. This type of accusations whether true or false raises concerns about the trust of security forces among different sections of the society. The Security forces should always refrain from such activities which gives them a negative image as well as hindering their work space and ethics. The percentage of custodial death in Police custody seems lower as compared to judicial custody. During Police custody, it seems quite evident that the one who died in the police station might have died due to two prominent reasons i.e. either because of torture or due to any health reason.

On the other hand, death of a prisoner who remains under judicial custody is an alarming and continuous pattern. There can be numerous reasons of death such as: -

- i) Custodial torture
- ii) Health reason
- iii) Suicide by the prisoner
- iv) Brutal fight between prison inmates

In order to achieve a reformatory goal towards zero deaths in custody shall only be achieved through moral policing and legislations governing custodial deaths of prisoners. There can be numerous reasons but the one and the foremost reason which comes to the mind of the citizens is Police and Security forces are responsible for the death of any prisoner happening under Police/Judicial custody.

The pressure of higher authorities over the low rank police officers often results in police torture.

A reformation not only through words but through activities will give a desired result in path of achieving a goal of zero deaths in custody due to police torture.

International Overview

The adoption of legal enactment about torture was first endorsed on December 10th, 1994 by the United Nation General Assembly. The main objective of this legal enactment was to avoid acts like atrocities and torture. The UNCAT Convention is rectified by more than 20 countries and its articles and provisions have been implemented by few countries as well which has further helped them.

However, India is not among the countries who rectified UNCAT and also, we do not have any local law related to custodial torture or death; The Supreme Court of India has used this convention in numerous instances in condemning custodial torture & atrocity, applauding the UNCAT convention the apex court also suggested to use it as creating a national anti-torture law in India.

Concept of custodial death in other countries: -

i) United States of America - The problem of Custodial deaths has gained tremendous attention in the country, particularly concerning deaths involving police encounters. Cases like George Floyd in 2020 and Eric Garner in 2014 sparked widespread protests and calls for police reform.

ii) United Kingdom - Custodial deaths have also been a matter of great concern, particularly in prisons. Reports have highlighted issues such as overcrowding, inadequate healthcare, and the use of restraint techniques leading to fatalities.

iii) Australia - Australia has seen numerous cases of custodial deaths, especially involving outsiders. Concerns have been raised about systemic racism within law enforcement and the justice system, contributing to alarming rates of deaths among indigenous people.

iv) South Africa - Custodial deaths have been reported in South Africa is concerning, often linked to allegations of police brutality and negligence in detention of accused person. These instances have raised concern about inhuman practices and the need for police reform.

Legislation Related to Custodial Death in India

There is no such legislation related to custodial death in India. Unavailability of anti-torture law is acting as a barrier in curbing Custodial death completely from India. Mr. Ashwani Kumar, a former minister in the central government demanded a comprehensive law for the prevention of atrocities, custodial violence and inhuman torture and even filed a PIL for that.

Few legislations related to custodial death in India: -

i) IPC deal with offenses related to custodial torture, cruelty, and death. These sections provide penalties against public servants who commit torture or cause harm to a person in custody.

ii) Provisions under CrPC mandates that a Magistrate should conduct an inquiry into any custodial death. This provision ensures an independent investigation into the circumstances surrounding the death.

iii) The Protection of Human Rights Act 1993 establishes the National Human Rights Commission (NHRC) at the national level and State Human Rights Commissions (SHRCs) at the state level. These commissions have the power to inquire into complaints of human rights violations, including custodial deaths, and recommend action against the concerned authorities. Custodial deaths in India remain a concern despite these legal protections, underscoring the need for stronger implementation of current laws and increased responsibility within the criminal justice system. Further legislative changes and the installation of new safeguards have also been demanded in an effort to stop such events and guarantee justice for the victims and their families.

Conclusion / Suggestion

Custodial death is an abuse on the dignity & liberty of common man. The constitution makers drafted the Constitution keeping in mind that, this document will help in safeguarding every human right of a human being and will help them in living a dignified and fearless life. But, unlawful and immoral policing and misuse of power can suppress all the positive rights guaranteed by our Constitution.

Undoubtedly, Police plays an important role in safeguarding every section of the society. In order to perform their job efficiently, they sometimes need to question anybody during their course of investigation but, such investigation must be conducted in humanitarian manner.

While researching on the said topic, 'Custodial Death & its impact on Indian Criminal Justice System' the main emphasis was to find a suitable reformative approach towards the dead end of custodial death. One person, any judgment or any recommendation by any authority cannot solely end this menace. We as a society need to come forward in order to curb it. Numerous reasons responsible for custodial death and independently Police or any Security forces cannot be blamed for this. We need to curb corruption first especially corruption when investigation of any crime is going on, corruption in jails. One of the main reasons of death in judicial custody can be negative psychological impact on prisoners that they are criminals and society will always call them criminals. This hampers their mental peace and they commit suicide or it hampers their mental as well as physical health, fights between jail inmates.

Prisons filled with prisoners more than its capacity does not give a good report about healthy environment among the inmates inside jail. The division or bifurcation between undertrials, convicted (of major crimes) & convicted (of petty offences) is important and will help in psychological and moral development of a prisoner. In today's world, it is not so easy to kill a person in Police or Judicial custody; few upgrades like installation of CCTV footage inside Police stations and in jails have played a major role and the percentage of torture by Police officers has come down. Though, strict sections in criminal laws should be added or any new legislation related to anti-torture law should be made which prohibits completely the menace of Custodial death in the country convicting those who are responsible for the atrocities. Taking, past into consideration when no safeguard was available to the prisoners and those who faced this atrocity did not get any justice due to low conviction rate in custodial death cases, not having proper legislation was also a major reason.

Moral Policing, reforms in jail manuals, steady and fast track trials, transparent & independent investigation of any crime solely by the respective Investigating officer, no media trial and less pressure by superior officers can definitely help in curbing the risk of Custodial death in India.

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