

Custodial Death

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Abstract: This paper mainly reflects on how a custodial death happens in India. The paper reflects few cases and the reasons behind such activities and also attempts to draw a pattern between the occurrence of such act and the response of the government. Even it also deals with the problems faced by the police to get information from the criminals.

Keywords: Custodial death, police system

1. Introduction

Custodial death means death of a person in custody of the police or other authority.[1] Custodial death is perhaps one of the worst crime in a civilised society governed by rule of law. The word custody implies guardianship and protective care. No civilised law allows custodial violence during custody.

According to article 49.18(a) (b) (c) (d) of the code criminal procedure if a person dies while in the custody of a peace officer or officers use of force or if a person incarcerated in a jail, the director of the law enforcement agency of which the officer is a member shall investigate the death and file a written report on the cause of death with the attorney general no later than the 30th day after the death on which the person in custody. The director shall in good faith make efforts to obtain all facts relevant to the death and include those facts in those reports. The attorney general shall make the report, with the exception of any portion of the report that the attorney general determines is privileged, available to any interested person.[2]

2. Causes of Custodial Violence

The custodial death varied and complex. There are number of factors that must be considered to determine the cause or element of death. For example drug abuse, component of psychology, condition of internal organs, particularly heart, plays significant role in unexpected custodial death.[2]

A detailed investigation must be performed and a thorough autopsy must be conducted in order to find the reason of the death of a person.

Police system is the arm of the democracy who deals with common man directly. Hence their power should not be abused.

- Working pressure: There are various work pressure to the police and well trained criminal who does not reveal any information quickly. In such a situation the mental pressure leads to adopt brutality in order to get information from criminals. Our law suggested that until and unless the guilt is proved beyond reasonable doubt. This makes the police to handle criminal in violence way in order to get information
- To show result: due to work pressure increases it makes police to give immediate results as soon as case is been recorded in the police diary. The status has to be filed in

the court. This makes the police to illegal arrest custodial death even occurs by police unjustified actions.[2]

- Punitive violence: For the betterment of society and in order to punish the culprits and not to let them away from the punishment they handle 3rd degree torture methods.

Constitution of India, article 21- custodial violence-protection of fundamental rights, human rights of criminal vis-à-vis duties of police balanced approach is necessary to meet ends of justice. Law should be made based on these two maxims.

1. Salus populi est suprema lex means the safety of the people is supreme law[2]
2. Salus republica est suprema means public weal is supreme law

The police of India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest and criminals. Many hard core criminals like extremists, terrorists, smugglers have strong roots in society. If there is more liberalisation in fundamental rights it leads to difficulties in detection of crime. To deal with such situations a balanced approach is needed to meet the end of justice

3. Prevention of Custodial Death in India

There are various steps taken by Indian legislation in the form of bill, act

- ✓ NHRC has issued guidelines for magisterial inquiry in case of custodial death
- ✓ The prevention of torture bill, 2010 has been introduced in the parliament and rajya Sabha has recently presented a report

CASES

- 1) *Saranjeet Singh v state of Punjab and others*, c.w.p.No. 16029 of 2008

The petitioner is the unfortunate father of a 25 year old young man who died an unnatural death inside the central jail, Amritsar. The petitioner's son was arrested in the connection with the case under the Punjab excise act and was under trial prisoner. According to the petitioner, his son was taken to Guru Teg Bahadur hospital on 27th

November, 2006 at about 5:22PM where he died within 4 to 5 hours. No intimations was sent to the petitioner. It was alleged that the boy died of custodial violence.

2) *Nilabati Behera alias Lalita Behera v state of Orissa and others*, 1993 AIR(SC) 1960

As prior mentioned, this is the case of a 22 year old boy, by the name of Suman Behera, was taken into custody by the police on the ground of theft, which were not proven, without an arrest warrant. He was found dead, on the railroad track the next day, on account of physical injuries. A letter dated September 14, 1988 sent to this court by Smt Nilabati Behera alias Lalita Behera, was treated as a writ petition under article 32 of the constitution for determining the claim of compensation. The respondent (police) claimed that Suman Behera had escaped from custody, and was run over by the train. The doctor who was appointed by the court, however, stated that the injuries to the deceased body could not have been inflicted by a train but rather from lathi blow. The court concluded in this case that a compensation of Rs 1, 50, 000 be awarded to the petitioner. Even though a few officers of law were mentioned in this case none were prosecuted for their act

4. Conclusion

Whenever there is any death happens in prison first blames g comes from the police authority before blaming others circumstances due to which a person died need to be ascertained. The government of India is till date very callous towards the issue of custodial death, and its action towards the eradication of this issue, are extremely constrained and restricted and hence conscious efforts to undo its way.

References

- [1] Left-wing extremism and human rights :- the role of civil liberties group in Andhra Pradesh by K.v. Thomas
- [2] [HTTPS://www.texasattorneygeneral.gov](https://www.texasattorneygeneral.gov)
- [3] Sudden death in custody by Darrel L.Ross, Ted chan
- [4] Civil liability in criminal justice by Darrell L.Ross
- [5] A dictionary of American and English law with definition of the technical terms of the canon and civil law by Stewart Repalje vol 2