



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Police, Torture and Terrorism

Kashwa Shah^a

^aSymbiosis Law School, Nagpur, India

Received 23 June 2022; Accepted 11 July 2022; Published 17 July 2022

Custodial deaths are very common in our country and other countries also. In this article, it talks about what is custodial deaths, what are different laws by which they can be prevented and also talks about the actions taken by police, reasons for deaths in police custody especially during covid-19, methods used by police in custody, and awarding compensation to the victims of custodial deaths. Custodial death is common in the modern era where the police beat the prisoners. Sometimes some innocent people are also brutally beaten. Sometimes due to force prisoners dies in prisons. Thus, this is what is described in this article.

Keywords: *death, torture, police.*

INTRODUCTION: WHAT IS POLICE CUSTODY?

When police receive information of any offence and an FIR is filed under section 154 of CrPC, police arrest a person who is a threat to society and it is important to do so that he does not commit any other offence, such officer brings that suspects to the police station, it is called Police Custody. It is the responsibility of the police officer to produce the accused before the magistrate within 24 hours excluding the journey from the police station to the court. Detention is necessary when it comes to police custody. Detention can be either in public or in a private area for questioning. If the police have doubt that a particular person is involved in the offence committed they may be put on suspicion until they hire their own lawyers.

Right to Freedom is the constitutional right that is given in the Indian Constitution. So every citizen has these rights and it is a fundamental right but is it also given to all prisoners in question. When suspicion is not kept free to leave the encounter with the police of his or her own, the police may have the person in his custody and thus a person is not kept free when he or she is under the custody of the police. In custody arrest of a person is necessary when police believe that this person has a direct connection with a crime and when police require a question and answer from the suspect they arrest such person. These type of incidents need arrest and other only needs temporary detention. This is a brief about police custody in criminal matters. Now the question arises as to what is Custodial deaths? How police torture takes place? And is torture and custodial legal or illegal in law. These all questions will be answered in this article and also some other questions will be also answered.

WHAT ARE CUSTODIAL DEATHS

Custodial death or custodial torture anything we say is one and the same and it is very common in the modern era. Custodial deaths happen when police brutally beat the prisoners or sometimes also to the people who are really innocent but there is doubt that they are also involved in committing crime and police brutally beat those people and due to harsh treatment it causes the death of prisoners. If we look at when such treatment started then the answer to these questions is that it started in the British era and today we are trying to curb this social evil in society. Major changes had been done by the government but they could not able to make a law that can curb this system of custodial deaths.

If we see in the last two decades, 1888 custodial deaths have been reported in India, with 893 cases registered against police personnel. There were 76 custodial deaths from 2001-2020 and in Gujarat 2020 there were 15 deaths and also in Uttar Pradesh. Recently Lawyers have broadened the definition of custodial deaths after Stan Swamy dies in hospital after brutal torture from the police. As we know that custodial death is connected with the physical torture of prisoners by the police. These priest-activist Stan Swamy who played a major role in the Bhima Koregaon case has been brutally beaten by the police and was on a ventilator in the hospital due to custodial torture by the police on 6th July 2021. This shows how police use their power and force and can do anything with prisoners in the custody.

SOME LAWS AND ACTS RELATED TO CUSTODIAL DEATHS

Some laws from the Indian Constitution that Article 21¹ states about the right to life which is to all citizens and also talks about personal liberty which is a fundamental right that cannot be taken away from its citizen. It talks about the right to health, right to food, shelter, right to bail, right to a speedy trial, right to free legal aid, right against custodial violence, death in police lock-ups, right to meet friends and family members, right to reasonable wage in prison, right against cruel and unusual punishment has been included under it.²

Article 22³ of the Indian Constitution also states that an arrested person has to be present before a magistrate within 24 hours and must provide lawyers of their own choice. Other Fundamental Rights for the prisoners under Indian Constitution are Articles 14, 19, 20, 21, and 22⁴.

Section 24⁵ of the Evidence Act is related to the confession of the prisoners in front of the court and thus it would be invalid if the court thinks that confession is caused by threat, force, physical and mental torture, or inducement and thus it would be not valid and strict action would be taken.

Section 26⁶ of the Evidence Act states that confession cannot be made in front of the police by the accused and no police force or torture will be done against the accused only to confess their guilt in front of the police and it will be all in the discretion of the accused whether to make confession in front of the police or not, otherwise according to these sections all confession will be made in front of the magistrate only⁷.

¹ Constitution of India, 1950, art.21

² 'Broaden Definition of custodial death say lawyer after Stan Swamy dies in hospital' (*Indian Express*, 6 July 2010) <<https://www.newindianexpress.com/nation/2021/jul/06/broaden-definition-of-custodial-death-say-lawyers-after-stan-swamy-dies-in-hospital-2326428.html>> accessed 23 June 2022

³ Constitution of India, 1950, art.22

⁴ Constitution of India, 1950, art.14, art.19, art.20, and art.21

⁵ Indian Evidence Act, 1872, s 24

⁶ Indian Evidence Act, 1872, s 26

⁷ Vivek Narayan Sharma, 'Prisoners' rights in India' (*The Times of India*, 20 October 2018)

<<https://timesofindia.indiatimes.com/blogs/lawtics/prisoners-rights-in-india/>> accessed 23 June 2022

Section 330⁸ of IPC states that any police officer causes hurt to any sufferer so as to extract confession or information which may lead to detention or for keeping valuable security or satisfy any claim or demand or to give information that may lead to restoration of the property or valuable security shall be punished for seven years and also liable to fine. **Section 331⁹ of IPC** is similar to that of Section 330. The only difference is grievous hurt by the police to the accused and for that punishment would be ten years and with a fine.

Section 348 of IPC states about wrongful confinement of the person in order to confess any information which may lead to the detention of an offence or misconduct and to restore any valuable property as security shall be punished with imprisonment which may extend to three years and with fine.

Under section 376 (2)¹⁰ of the IPC, any police officer who commits rape within limits of the police station on any woman who is under police custody in order to extract information and that police in the reasonable ground have doubt that such person is also involved in the offence through that woman is innocent commits rape only to make her confess her guilt will be imprisoned not less than ten years and may extend to imprisonment for life and shall also be liable for fine.

According to the **National Human Rights Commission**, new fresh guidelines have been released for custodial deaths. In case of custodial death, intimation has to be given within 24 hours such as Post-mortem reports, Magisterial Inquest Reports/Videography Reports of the postmortem. Custodial death occurs due to custodial violence and in case of delay in providing custodial death, reports would lead to delay in giving relief to such person. According to NHRC reports there are 28 from Maharashtra, 19 from West Bengal, 17 from Uttar Pradesh, 12 from Madhya Pradesh, 11 from Andhra Pradesh, 11 from Assam, 11 from Gujarat, 10 from Punjab and 9 from Tamil Nadu and out of these 177 cases have been reported of death in police custody. **Asian Centre for Human Rights claimed 1674 custodial deaths.**

⁸ Indian Penal Code, 1860, s 330

⁹ Indian Penal Code, 1860, s 331

¹⁰ Indian Penal Code, 1860, s 376(2)

METHODS USED BY POLICE FOR TORTURE THE ACCUSED

So from above, we had understood that the state's most importance is the security of an individual. So the question lies here for whom an individual is to give security. The obvious answer is from criminals, and terrorism who do crimes and attack individuals and states to destroy them and also harass them mentally and physically. So here we will talk about, the behavior actually done by police in reality with this type of terrorists and instead what actually type of behavior they have to do. To extract all information from terrorists or criminals, police torture these people which is absolutely not right and even not fair therefore it is not permitted and violates Article 21. According to this Article person whom the police had detained can not use 'third degree torture' for just extracting information about his accomplices, weapons, etc. Such crime must be interrogated by scientific interrogation-which is in accordance with the provision of law. The way to behave with a terrorist is different than ordinary criminals thus need different methods that are innovative and had a different approach. Terrorists are a danger not only to the state or community but also Rule of law. They actually violate the Human Rights of the citizens, thus there is the utmost need of developing scientific methods of investigation and training the investigators to use these methods properly to meet the challenge¹¹.

REASONS FOR DEATH IN POLICE CUSTODY

Force is commonly used by the police during the interrogation of any accused and due to lots of pressure and force applied by police to the accused, death is common in police custody and is not correct as police have no right to take away the life of the accused during interrogation. The right to life as we had seen above is a fundamental right that is extended not only to the common people of the country but also to all the prisoners and thus police cannot take away the life of the accused. Death in police custody does not only depend on the force of the police officers but several reasons follow and thus it is important for all police officers to know all the

¹¹ ' Confession and its relevancy, the Indian Evidence Act 1872- Section 24, 25, 26, 27, 28, 29, 30 of Indian Evidence' (*Business Wonder*) <<https://www.businesswonder.com/Articles/Confession-and-its-relevancy-The-Indian-Evidence-Act-1872-Section-24-25-26-27-28-29-30-of-Indian-Evidence-Act-1872.htm>> accessed 23 June 2022

reasons for custodial death and thus have to take precautions and can save the custodial death¹².

The reasons are as follows:

1. Proper search and investigation is a key factor before putting the person behind bars and in cases this has not happened and the person is kept behind bars and has committed suicide by hanging or taking poison etc. Thus proper investigation and search have to be made.
2. No other method of interrogation is being adopted except using force.
3. A police officer who is not concerned with the interrogation of the accused causes more harm to the accused than that police who are involved in the interrogation of the accused
4. Due to the torture of the police, no medical aid is given to the accused person and due to this death occurs in police custody.
5. Lack of patience is the main reason for the custodial death of the accused as they need immediate confession.
6. Lack of supervision is also the main reason why senior officers come to the police after the death of the accused in police custody.
7. The traditional method used by the police is a force to not only to harden criminals but also use force to those who have no criminal record
8. Suicide of the accused in lock up due to misbehavior by police.
9. No respect for the law and human rights of the other person and adopting wrong methods of using force which result in custodial death.

Thus to avoid custodial death it is necessary that a person who is integrated should not be put behind bars and should not be tortured in police custody.

¹² Mohit Kumar Gupta ' Suggestions to curb the menace of Custodial Violence and Brutality: Trageting the III- Conceived Notion of 'My Area, My Custody and My Law' (*Live Law*, 24 October 2021) <<https://www.livelaw.in/law-firms/law-firm-articles-/custodial-violence-rule-of-law-indian-evidence-act-national-human-rights-commission-184197>> accessed 23 June 2022

Thus some points that should be kept in mind before conducting an interrogation of any person are as follow:

- Preparation for interrogation should be done beforehand
- The place of interrogation must be selected and should be done continuously
- Interrogation must be in writing
- Every accused should be interrogated separately
- No police officer has the right to be included in interrogation who has no jurisdiction to deal with such interrogation and officers should keep patience during interrogation.
- Age, sex, and nature are important while interrogating.
- Before interrogation proper search and investigation by the police office are necessary.
- Police have to keep watch on the activities of criminals before interrogation.
- Examination and medical treatment are important for the injured arrested person and these have to be done immediately.
- Misbehavior by police is prohibited during interrogation.
- Scientific methods should be adopted during the investigation.

POLICE TORTURE DURING COVID-19 INTERNATIONALLY{LOCKDOWN}

A very recent example is of the Covid-19 pandemic where we can see the police torture had increases for those who come outside during lockdown in the country. Police torture is not limited to our country but it is also spread throughout the world. For making people realise the rules and laws made by the government police use heinous methods such as the beat people on roads, and sometimes they torture to such a extent that some people die during custody. As police torture had increased especially during the lockdown periods, World Organisation Against Torture published a report where that decide to apply the international legal anti Torture framework to prevent police from using methods which is a risk to the life and health of the citizens to counter this method.

Police are for protecting their citizens. But due to the extreme burden the use this techniques which is dangerous for the life of the people. Police torture extends to the foreign countries like in the cities of Moscow to Minneapolis. For example rubber bullets that were used in Chile, due to which around 200 people lose their sight. And in 2020 one of the important landmark judgement of Colombia that joins the authorities to protect demonstrators, and human right group bans a certain types of guns that cause death and several injuries.

In recent years police torture had increased especially during lockdown periods which result froms in health of common people. Weapons like non-lethal like stun grenades cause severe injuries, disabilities and sometimes also cause the death of many people. Police sometimes use the chemicals that are risky for people. Reports made by OMCT include various people who are professionals varying from the medical field to the law field. They discuss challenging the torture method used by police and to come up with the best solutions for providing legal protection against torture. Human rights groups had shortlisted the type of gun that has t be used by police and decided to ban dangerous weapons which led to several injuries and sometimes also result in death.

AWARDING COMPENSATION TO THE VICTIMS OF CUSTODIAL DEATHS

In many cases, victims who have suffered from harsh behaviour and those who died in custody were awarded compensation. In some cases like *Sube Singh v State of Harayana*¹³ the question arise whether compensation should be awarded under Article 32 and 226¹⁴. Thus Apex Court laid down some parameters to award compensation to the victims. In cases of custodial deaths and torture, Court may award compensation under Article 32 or 226 of the Constitution. But before granting such compensation Court arise some questions as to whether the violation of Article 21 was patent and incontrovertible and whether the violation was gross and magnitude in nature and whether custodial torture was an alleged result of death.

In one of the cases that is *Vikram Dhillon v State of Harayana and Ors*,¹⁵ the Supreme Court said that award of compensation under Article 32 or 226 of the Constitution is a public law

¹³ *Sube Singh v State of Haryana & Ors.*, (2006) Writ Petition (Criminal) No. 237/1998

¹⁴ Constitution of India, 1950, art.32 and art.226

¹⁵ *Vikram Dhillon v State of Harayana and Ors.*, (2007) Appeal (Civil) No. 652/2004

based on the strict liability of fundamental rights to which the principle of sovereign immunity does not apply.

If the citizen is deprived of constitutional rights it is important for the state to increase the compensation remedy and for these it is necessary to compensate. It is not important that death is deliberate, accidental, suicide or due to neglect is not important, the only important is that this all are called custodial death. It is the state who had committed the crime and thus due to these there was custodial death and thus it is important for the state to pay compensation.

CONCLUSION

So torture done by police as we have seen above violates the human rights of criminals who are different from other ordinary criminals. Police often use the shortcut to extract information but applying shortcut methods is the dangerous for the country and also to its citizens. A person may not be criminal but due to torture and mental and physical harassment done by police, force one innocent individual to give a false statements that he had done a crime in fact, in reality, he did not know about it and he is totally innocent. So for this, a strict law is necessary where police are restricted from performing malpractice. Do you know why police have to apply shortcut methods nowadays to extract information about criminals? The main reason is that they are burdened with lakhs of the case and even some cases are pending. As they have lots of pressure to complete pending cases they are using shortcut methods. Due to this many criminals die when they are in custody as the 'third-degree torture' method has been used by police. Thus, scientific methods are needed to be adopted where police within a second can extract all information about terrorists without violating any human rights and if innocent, by giving justice. This will reduce the burden of multiple cases that are pending.