Jus Corpus Law Journal

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

Absolution: Laws for Victims

Badal Yadav[a]

[a]Maharaja Agrasen Institute of Management Studies, New Delhi, India

Received 19 October 2022; *Accepted* 31 October 2022; *Published* 04 November 2022

This article deals with the situation in which state and law play a vital role; the situation of illegal arrest, custodial death, fake encounters, and many other crimes committed by state machinery hiding behind the curtains of law and order. The Supreme Court has termed these crimes as "the worst kind of crime in a civil society under the rule of law". According to data from the National Campaign Against Torture, five people died in custody every day in India in the year 2019. Most of these deaths have taken place in judicial custody. This is the data of only one of such situations there are many more. There is no proper machinery or laws to act as a watchdog over the acts and the consequences committed by these organs of the state. As a result, many innocents are falling prey to such menace. At present there are certain laws but whether such laws are enough to provide proper safeguards to the victim's life or compensation for the wrongs. The release or acquittal of the innocent is no consolation and does not compensate for the loss of reputation or the temporary loss of precious personal liberty. Given the dire consequences and vulnerability of innocents to such offences, an in-depth study of such crimes is needed to formulate laws regarding the same.

Keywords: *victim, law, arrest.*

INTRODUCTION

"*Always the innocent are the first victims, so it has been for ages past, so it is now*."[1]

Innocent until proven guilty is the presumption that an Indian court of law follows in any of its proceedings. The main purpose of this presumption is to safeguard the basic human rights of the people and to protect them from arbitrary arrest and detention. But what if the accused isn't proven guilty? what if the accused is innocent? What if the accused is killed without any proceedings? Does the Indian legal system have something to compensate for all the hardships that the accused and his family had to go through while the proceedings and investigations were in place? Is the Indian legal system compliant enough to come out clean on the presumption of 'innocent until proven guilty? This paper will conclude each of these questions with appropriate reasoning. Absolution is the act of forgiving someone, especially in the Christian religion, for something bad they have done or thought. Absolution is compensating for every evil or wrongdoing with some good deeds or in some other way. So, before we talk about compensation, victim or innocent, we must understand the wrong, the evil. We must understand why the state needs to perform absolution towards several victims for each of its wrongdoings.

THE WRONG: ILLEGAL ARREST

Before discussing what is an illegal arrest or unlawful arrest we must first know basically, what is an arrest. There isn't any provision in our legal system that defines arrest or its meaning. But section 46 of the Code of Criminal Procedure defines the method of how an arrest shall be made. So, According to Section 46 of CrPC:

- In making an arrest the police officer or other person making the same shall touch or confine the body of the person to be arrested unless there be a submission to the custody by word or action.

[1] J.K. Rowling, *Harry Potter and the Sorcerer's Stone* (first published 1997, Scholastic Corporation) 183

- If such a person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or another person may use all means necessary to effect the arrest.
- Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.
- In exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.[2]

Thus, we can say the following are the requisites of a legal arrest:

- **With sufficient cause**: When there is sufficient prosecutable evidence or cause; or when it is discovered in an initial investigation that the person is involved in an illegal act.
- **With a warrant:** If the police have a relevant order or warrant issued by a competent authority.

Thus, based on the above requisites, the following are the incidents that cause wrongful or illegal arrest:

- A wrong person was arrested, and police kept him under arrest without having prosecutable evidence.
- Arresting someone in the absence of reasonable cause is done to cause harm to the body or reputation.
- Arresting someone with an arrest warrant which has been issued by producing false evidence against that person, or we can say arrest based on pure malice.

In the recent case of the arrest of Aryan Khan, son of Shah Rukh Khan, for drug trafficking. In October 2021, the raid on Aryan Khan was conducted, which made headlines in the news for months. The raid was about NCB's claim of the involvement of SRK's son in international drug

[2] Code of Criminal Procedure 1973, s 46

trafficking. Furthermore, when the case was established, WhatsApp chats were claimed as evidence. Later on, because of the extortion allegation against Mr. Wankhede, the case was passed on to an investigation team that took over the case of SRK's son and reported that there was a huge lack of prosecutable evidence and failures in the initial investigation. These failures include the failure to film the ship and the failure to conduct the medical examination to prove the consumption or to use it as evidence later. Also, in this case, NCB wasn't the competent authority to make an arrest; it was a job best suited for local police. NCB's main job is to stop the trafficking of drugs, not to arrest people from the parties or to intimately involve itself with any drug seller. Cases like these are wake-up calls for the government to formulate strict laws to safeguard the rights of the people who have got to go through such a situation. The government must also devise some better compensation guidelines to perform absolution for the wrongs done by its agencies.

THE WRONG: CUSTODIAL DEATH

Questions have often been raised about deaths in police custody. According to the National Human Rights Commission, every day six people die in police custody in the country. Custodial death, which is also mentioned by the media as lockup deaths, happens when a police officer or officer in charge of such custody or investigation officer exceeds the power given to him by law and causes the death of the person in custody or lockup. No law in India allows a police office or officer investigating to use force or torture to such an extent. Section 29 of the Police Act, 1861; Sections 330, 331, and 348 of IPC are some provisions regarding Custodial Death in India.

Section 29 of the Police Act talks about the punishment to be awarded to the person found guilty of violence to any person in his custody. Every police officer who has been found guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by a competent authority or who causes any unwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three months' pay, or to imprisonment of either description for a term which shall not exceed three months, or to both.[3]

[3] Police Act 1861, s 29

As per sections 330, 331, and 348 of the IPC, any police officer or officer in charge of such custody or investigation officer who tortures or causes grievous hurt or wrongfully confines any person in his custody to induce that person to confess or admit any crime or compel him to point out any stolen property which has been taken care of by the person under investigation, shall be punished accordingly stated under the section stated above.[4] In the landmark judgment of ***D.K. Basu v State of West Bengal***[5], the Apex court highlighted the increasing number of custodial deaths in India. The court observed that the legislation failed to propose a proper mechanism to deal with the cases of custodial deaths or lockup deaths. The court also issued guidelines to prevent the increase in the number of custodial deaths. They are as follows:

- The police officers or officer-in-charge of such custody or investigation officer shall not use third-degree methods while interrogating or inquiring with the accused
- Educating the officials with basic human values during the period of their training.
- The police officer shall use balanced methods of interrogation or inquiry in cases of serious crimes.
- The police officer making such an arrest must prepare a memo of the arrest and at least one family member of the person being arrested shall be present at that time.
- The police officer shall mandatorily follow guidelines stated under Article 21 and Article 22(1).
- The arrestee shall be informed of the reasons for his arrest so that he can understand his rights at the time of the arrest.
- Also, the court gave some preventive measures which must be strictly followed by the police officer at the time of making an arrest.

Referring to the Human Rights Commission report it can be concluded that the number of custodial deaths in India has increased compared to the previous year. In the year 2020-21, 1940 people died in custody, which has increased to 2544 in 2021-22.

[4] Indian Penal Code 1860, s 330
[5] *D.K. Basu v State of West Bengal* [1997] AIR 610 (SC)

THE WRONG: FAKE ENCOUNTERS

Retired judge, Justice Markandey Katju says that encounter is never a struggle, all are brutal murders. There is no direct definition of extra-judicial murder in India. The word "extra" here indicates that certain "encounters" or killings do not come under the legal action required for compulsory judicial activities. But we seldom come across this. But let us note that such killings destroy the ideological foundation on which the law and order in India rest i.e. the promise of justice and democratic equality. India's judiciary gives every person, beyond his identity, a trial before being convicted of any criminal act. If there is no trial in the court of law, then it cannot be legally decided whether the person concerned was guilty or innocent.

On 6 December 2019, four accused of rape and murder of a veterinary doctor were killed by the police in an encounter in Hyderabad. The news of the Hyderabad encounter was widely supported in India. Following strong protests by human rights activists, the Supreme Court constituted Justice VS Sirpurkar Commission to investigate the murders of the four men. In its 387-page report of the investigation, the commission has said that the encounter was fake and the accused were murdered and 10 policemen involved should be tried for the crime. Generally, in almost all types of encounters, the police only mention the action taken during self-defence. Section 46 of the Criminal Code, i.e., CrPC states that if an offender tries to save himself from being arrested or tries to escape from police custody or attacks the police, then in these circumstances the police can retaliate against that criminal.

THE ABSOLUTION FOR ILLEGAL ARREST

Currently, Section 358 of the CrPC serves as a tool to punish the person based on whose complaint an illegal arrest was made and to provide compensation to the victims of such a menace. Section 358 of the CrPC talks about compensation to be awarded to those who are groundlessly arrested.

- Whenever any person causes a police officer to arrest another person, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such an arrest, the Magistrate may award such compensation, not exceeding one hundred

rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

- In such cases, if more than one person is arrested, the Magistrate may, in like manner, award to each of them such compensation, not exceeding one hundred rupees, as such Magistrate thinks fit.
- All compensation awarded under this section may be recovered as if it were fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for a term not exceeding thirty days as directed by the Magistrate, unless such sum is paid sooner.[6]

The right to personal liberty is guaranteed under Article 19, Article 20, and Article 21 of our Constitution. The "Writ of Habeas Corpus" is the golden remedy for an illegal or false arrest or prolonged detention by police officers. The Supreme Court of India and the High Courts of all states can issue this writ of habeas corpus under Article 32 and Article 226 respectively. If the police have arrested or detained any person without the authority of any law or in contravention of the procedure established by law, which authorizes such arrest or detention, such arrest or detention is in itself illegal and unconstitutional. The High Court or the Supreme Court may issue a writ of "habeas corpus" against the authority which has arrested and detained the person and may order the release of the detained person. Article 21 of the Constitution states, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

THE ABSOLUTION OF CUSTODIAL DEATH

In the landmark judgment of ***Nilabati Behera v State of Orissa***,[7] the Hon'ble Supreme Court highlighted the rights of prisoners who are under trial to seek compensation. In this case, the Supreme Court laid the following guidelines:

[6] Code of Criminal Procedure 1973, s 358
[7] *Nilabati Behera v State of Orissa* [1993] AIR 746 (SC)

- Pecuniary compensation is a well-accepted and effective remedy in public law for the redressal of the establishment of the violation of fundamental rights.
- The claim is based on the principle of strict liability, in which the defence of sovereign immunity is not available to the state.
- Here, the objective of giving compensation to the victim is not to punish the offender but to apply bandages to the wounds of the victim. The punishment shall be left to the court prosecuting the offender in the respective case.
- The quantity of money to be awarded as compensation is subject to the facts of each case. It is close to impossible to formulate any formula for that matter, but in the case of ***Lakshmana Naidu v State of Tamil Nadu***, three people died at the hand of a forest officer for which compensation of Rs. 5 lakh was sought in the court of law. The court calculated the amount of compensation by a specific general rule, which amounted to 7 lakh, but later on, the court only awarded the petitioner Rs. 5 lakh, as demanded. The court later criticised this move as being against the rule of law.

Guidelines should also be drawn up for educating and training officers involved in the deprivation of liberty as torture cannot be effectively prevented unless the senior level of the police machinery is aware of the seriousness of such issues and will not alter existing practices.

THE ABSOLUTION OF FAKE ENCOUNTERS

On 23 September 2014, a bench of the then Chief Justice of India RM Lodha, and Justice R F Nariman referred to the encounter during a judgment. This bench had written in its decision that these rules should be followed for a fair, effective, and independent investigation of the death during the police encounter. The salient features of that decision are as follows:

- Whenever the police receive information about any criminal activity, it should be either in writing (especially in the form of a case diary) or through any electronic medium.
- If there is any information about any criminal activity, or if there is information about any kind of firing from the police side and there is information about the death of

someone. So an FIR should be lodged in the court under section 157 with immediate effect. There should not be any delay in this.

- It is necessary to conduct an independent investigation of this entire incident from the CID or a team from another police station, which will be supervised by a senior police officer. This senior police officer should be one rank above the highest officer involved in that encounter.

Under section 176, there should be a magisterial inquiry into every death in police firing. It is also necessary to send a report to the Judicial Magistrate.

- It is not necessary to involve the NHRC in the investigation unless any doubts arise in the independent investigation. However, it is necessary to send the full details of the developments to the NHRC or the Human Rights Commission of the state without delay.

The Supreme Court in ***Prakash Kadam v Ramprasad Vishwanath Gupta*** said, "*...when a trial proves a fake encounter against policemen, they should be given the death sentence, taking it as the rarest of rare cases.*" *The court said,* "*Policemen accustomed to wielding guns, who think they can kill people in the name of encounter, should know that death awaits them too*."

CONCLUSION

The study concludes that menace by the hand of the state is increasing in India. Custodial deaths, illegal arrests, and fake encounters are just examples. There are many more such offences. The Indian legal system should expand the virtue of current laws dealing with crimes done under the name of the state and make such laws more stringent to cover most of their aspects. The criminal act of a criminal group or individual can be highly condemned, but it cannot justify their murder or harassment in police custody. Police custody is such a dark place, where security personnel has unlimited power. In this darkness, these menaces are planned and executed.