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**CUSTODIAL DEATHS AND VIOLENCE :- A BLOW TO HUMAN
RIGHTS**- Kavya Dixit¹**ABSTRACT**

The Custodial deaths and violence in the world's biggest democracy has raised the eyebrows of every citizen and shaken the faith in the democracy. The custodial deaths are a blot on the image of the image of the Indian police thus can only be eliminated under a more efficient police leadership, which no government seems to want.

Research Questions:- For what social purpose do police exist? What values do the police preserve in a democratic society? Are the police to be principally an agency of social control with their chief value of the efficient enforcement of the prohibitive norms of substantive criminal law.

Human Rights has been put forwarded by John O' Manique's theory of evolution and survival. The right of nature theory is the liberty each man hath to use his own power. Kant's theory of human rights is the basis of our dignity. It not only encompasses the rational capacity but also the autonomy.

The project will emphasise on the moral aspect of the custodial deaths and also on the relative theories that are associated with it.

1. Introduction

Custodial deaths are the grave violation of human rights and what is surprising is this despite having laws and democratic government the rate of deaths is increasing. Custodial

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deaths are not just the blot on democratic regime but also on the humanity. According to National Human Rights Commission report of 2021 1,067 people died in the first five months of the custody this record is really harrowing because it point out the finger at working of police and why in the cases the person is treated as convicted.²

Custodial torture is prevalent and despite of law third degree is still there punishing even the privileged. Chief Justice of India expressed his concern over this and said that the threat to human rights and bodily integrity is most in the police stations thus it is important to check the excess use of powers.³ In the decade till March 2020, 17,146 people died in police and judicial custody which is really depressing and shameful as sometimes in absence of legal aid people are forced to stay in custody as they are not aware of how to get rid of it.

The law says that if person is suspected of any crime then his custody should not exceed the span of 24 hours and if the custody is exceeding then the police has to take the prior permission of judicial magistrate. The report of National Campaign Against torture states that most of the deaths take place within 24 hours of the custody.

2. Custodial Deaths and Violence

Custodial deaths referred to as death that happened during police, judicial or army custody. Custodial deaths mainly begin with the police custody thus the role of police is imperative. In recent months we have seen how things went out of hands as the case of Hyderabad encounter and the death of Gangster Vikas Dubey are example of it. The major reason why death takes place is because of arrest and it is the initial of the custody. So, in order to bring down custodial violence and deaths the number of arrests should be reduced.

² National Human Right Commission, Custodial deaths

³ Rounak Kumar Gunjan, '5 Custodial Deaths Per Day, Rapes, Caste Crimes: Why CJI Finds Threat to Human Rights Highest in 'Thanas'(News 18, 9 August 2021) <<https://www.news18.com/news/india/5-custodial-deaths-per-day-rapes-caste-crimes-why-cji-finds-threat-to-human-rights-highest-in-thanas-4061867.html> > accesses 18 November 2021

If we look at law the Section 41 of Criminal Procedure Code it does not mandatorily calls for arrest even in the cases of cognizable offences. The large number of arrests without proper enquiry and legal aid provide base for violence and torture. The cause of death can be natural death or illness.⁴

Sometimes what happens is that most of the torture happen before the arrest and even before they are taken into custody so police easily deny that it is not case of custodial death.⁵The problem is this in order to identify custodial death we need evidences and evidences are available with police so it is hard to collect proofs.⁶

In the above backdrop, it is pertinent to mention that India is one of the very few countries that have not ratified the UN Convention against Torture, which does not auger well for the protection of human rights in our country. India does not have a stand-alone anti-torture law and ratifying it would require framing such a law.⁷

2.1 The Role of Police

In Custodial Deaths the role of police is always questionable and thus it requires attention to understand the working of police. There are laws which have given police authority to arrest and take into custody but no law authorize the torture and violence so whenever it happens it is an example of exceeding the powers given to police.

The Police should understand the line between the revenge and justice and they should not take law into their hands. Police enjoy a great deal of impunity in India. They are also adept at finding out ways and means to avoid the implementation of instructions. In the absence of any regular follow-up mechanism, the instructions still largely remain on paper. The nuisance value

⁴ Code of Criminal Procedure, S.41

⁵ Rangita Chaudhary, Custodial deaths and Anti torture law, (IP leaders, 3 January 2021)
<<https://blog.ipleaders.in/custodial-death-anti-torture-law/>> accessed on 19 November 2021

⁶ *Ibid*

⁷ *Ibid*

of police, their power to intimidate witnesses and harass common man also save their skin. They more often than not succeed in putting up their version of the story before the Court.⁸

Section 167 of CrPC talks about two type of custodies one is police custody and other is Judicial custody. The section mentions that police custody cannot exceed 15 days unless the extension is granted by the magistrate by citing proper reasons and if police inquires for more than 24 hours after taking the approval of magistrate that is known as Remand. The judicial custody means sending a person to jail temporarily or permanently.⁹ Custodial violence includes harassment, death threats, rape threats beating, extortion and other kind of violence. The police officials commit violence in the name of investigation which is shocking for people who treat police as their guardian.¹⁰

2.2 State Basis Analysis

We have example of torture right from the history also during the reign of Nanda empire Chandragupta Maurya's family was provided hat was just barely enough for survival of one person and during the reign of Mughal Empire for the crime of robbery the hands were chopped off. So, the concept of custodial torture is not new it is well established in Society.¹¹

The statewise data varies and it reveals some striking facts that how different state police are acting to the custody. As police is the state subject so the quality and humanity of police force decides the working of laws. If police is more humane then there would much fairness in investigation and the custodial deaths will bring down.

According to the recent data shared by the Ministry of state affairs the custodial deaths that India reported in 2020-2021 is 1840. The highest number of deaths are recorded in Uttar Pradesh and

⁸ *Ibid*

⁹ Manmeet Singh, Custodial Violence in India (Legal Service)
<http://www.legalservicesindia.com/article/1893/Custodial-Violence-in-India.html>, accessed on 19 November 2021

¹⁰ *Ibid*

¹¹ *Ibid*

even the highest number of encounters happened in Uttar Pradesh. The incident of Vikas Dubey is still fresh in everyone's mind.¹²

According to the guidelines issued by the National Human Right Commission every death should be reported in 24 hours of the incident to the district magistrate. If enquiry suggests that there was some negligence then the proceedings will be initiated against that public servant.

The deaths in the state of Madhya Pradesh, Gujarat and Maharashtra are also surprising because these are the states which come really high under the Good Governance Index.¹³

3. Stand of Judiciary

Judiciary is always been vocal about Custodial deaths and violence and many times upheld the humanity and criticize the blatant use of violence and even considered excessive interrogation as torture. The role of Judiciary is not just limited to pronouncing Judgements infact it role extents to being an active court which never hesitates from taking suo moto actions to priorities the humanity over other things.

In the case of DK Basu v. State of West Bengal¹⁴ the supreme court laid down 11 guidelimes for arrest and detention despite of the constitutional safeguards that are available. One of the most important headline was listing of arrest and police of custody within 12 hours on the visible notice board outside police control board.¹⁵

¹²Taruni Gandhi, Custodial deaths in India: Uttar Pradesh tops the list (The daily Guardian,28 July 2021) <<https://theguardian.com/custodial-deaths-in-india-uttar-pradesh-tops-the-list/>>, accessed on 19 November 2021

¹³ *Ibid*

¹⁴ D.K. Basu Versus State of West Bengal [1997] (1) SCC 416

¹⁵ Deeksa Saggi, Custodial Deaths and Role of Judiciary: A critical Analysis, (Latest laws, 25 July 2020) <https://www.latestlaws.com/articles/custodial-deaths-and-role-of-judiciary-a-critical-analysis>, accessed on 20 November 2021

In the case of *Yashwant and Others v. State of Maharashtra*¹⁶ the apex court upheld the conviction of nine policemen involved in the case and extended their imprisonment from three years to seven years. In this case the policemen were guilty of excessive compulsion to extort confession and thus they are guilty. The greater power also mean greater responsibility so police should be responsible for their deeds.¹⁷

In the case of *Nilabhati Behra v. State of Orissa*¹⁸ the court took a progressive turn and held that police have to compensate to the victim. The Custodial violence should be dealt strictly and legal aid should be provided to the person. Sometimes in absence of legal aid many people remain silent to this inhumane crime.

3.1 John'O Manique's theory of evolution and survival

The famous human right theories which are prevalent from long time are Rawl's and Nozick's theory. Rawl's human right theory focuses on modern human rights and believe in universal acceptance of human nature. The significance of John Rawls's human rights theory is in that he does not derive human rights for single metaphysical, authoritative source, such as reason or conception of human nature.¹⁹

Rawl's human right theory is more focused on morality and thus believe in singular aspect of human rights which is really thin definition of it.²⁰Nozick's theories are more directed towards the freedom of having control on one's decisions where a person is not forced to do anything. In custodial deaths also when a person is tortured to confess that is against the human rights as man is born free and if he is forced to do anything then it is against the law of nature.²¹

¹⁶ *Yashwant And Others v. State of Maharashtra* [2018] 4MLJ (Cri)10(SC): -

¹⁷ *Supra* note 14

¹⁸ *Nilabati Behara v. State of Orissa*[1993] SCC (2) 746

¹⁹ Sanja Ivic, *Dynamic nature of human rights: Rawl's critique of moral universalism*, <<https://www.scielo.br/j/trans/a/Tj5rR3cqKmV4wtkfXfzxq4p/?lang=en>> accessed on 21 November 2021

²⁰ *Ibid*

²¹ *Ibid*

John O Manique's theory presented a different picture it contradicted the negative nature of humans and firmly asserted that mutual care and sympathy are as effective as selfishness and competitive behavior.²²

Emanuel Kant's theory of human rights has both negative and positive aspect but despite of this his theory still remains the most relied upon theory about human rights and no one so far able to reconstruct it again.²³

Kant says, "Human rights of man have to be sacred and it does not matter how great sacrifice ruling power has to pay for it."²⁴ Custodial violence is totally against this and it compels a human to confess against his/her own will and his right to privacy and right to life is outrightly breached. Kant always held this belief that human rights are above any rights and thus they are superior.

The right to freedom is innate and it cannot be taken away from any human being however he did not explicitly mentioned right to freedom as human right but if we go through his theory there are many points which shows that he considered right to freedom as an integral part of human rights.²⁵ Kant very much emphasized on ethics and described it as the sole legitimate reason for concept of human rights.

Kant explains that every person despite of having different class, economic condition and culture is having same dignity and it is his right to be accepted as dignified human being. Human dignity has uncomprable and an unequal worth that everyone has and no one can take this right.²⁶

Kant also emphasized upon legal and natural justice and stated that natural justice has acceptance all over the world but legal justice doesn't have universal acceptance it is limited to one particular region. For example in certain regions custodial violence is not an offence and autocratic countries don't have any qualms against this.²⁷

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ Gisbertz, Philipp, "Overcoming Doctrinal School Thought: A Unifying Approach to Human Dignity". *Ratio Juris*,(2018) Vol. 31, Issue. 2, p. 196.

²⁷ James Fieser, Human Rights,(International Encyclopedia of philosophy), < <https://iep.utm.edu/hum-rts/>> accessed on 22 November 2021

4. International Stand on Custodial violence

In the case of *Kishore Singh v. State of Rajasthan* it was held that third degree is violative of Article 21 of Indian constitution and condemned the use of custodial violence. There are many countries which consider excessive interrogation as a form of torture and count it into custodial violence.²⁸

The United Nation Rapporteurs roped in the Indian Government for killing of Muslim men in custody. The Paris principles were adopted by the India at the First International Workshop on national institutions for the protection of human rights held in Paris. After the enactment court issued the guidelines which made it mandatory to report the custodial deaths within 24 hours by DMs and SPs however it is not strictly followed.²⁹

The United Nation adopted the convention against torture, inhumane treatment and punishment on 10 December 1984 resolution (39/46). The definition of torture is not exhaustive it is expansive. An Optional Protocol to the Torture Convention was adopted by the General Assembly of the United Nations on 18 December 2002 (resolution 57/199). The Optional Protocol, which entered into force on 22 June 2006, establishes a system of regular visits by international and national bodies to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.³⁰

5. The root cause and solution to it

²⁸Deepakshi Chachan, A critical Analysis of custodial violence in India, (All India Legal Forum, 29 April 2021) <<https://allindialegalforum.in/2021/04/29/a-critical-analysis-of-custodial-violence-in-india/>> accessed on 23 November 2021

²⁹Satya Prakash, SC orders installation of CCTV cameras in all police stations across India, (THE TRIBUNE, December 2, 2020), < <https://www.tribuneindia.com/news/nation/sc-orders-installation-of-cctv-cameras-in-all-police-stations-across-india-178995>> accessed on 20 November 2021

³⁰ J. Herman Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dordrecht, Martinus Nijhoff Publishers, 1988<<https://legal.un.org/avl/ha/catcidtp/catcidtp.html>>

The main reason behind custodial violence is to get the confession of the accused and thus police officer or officer in charge of judicial custody try to do everything. Sometimes if they do so they are praised by their officials and it is something which increases their reputation among their colleagues. The work pressure is also prominent reason behind it because police have to perform both delicate and difficult task. The criminals are nowadays equipped with high quality weapons and technology thus it is difficult for police to track them and find the truth in absence of infrastructure.³¹

The other factors are punitive approach which makes police to think that they are the supreme authority and it is their job to decide the criminal. Positive reinforcement is also one of the reasons behind violence which means if police does not punish them then they would not confess their crime and this is very wrong perception. The lack of training is also a reason for this because despite of laws custodial violence is acceptance in police culture and this is stopping the progress of humane society.³²

The custodial violence can only be reduced when police realize its job that deciding who is wrong is not the job of police in fact it is the job of judiciary to look into this matter. The proper training should be provided to the police officers to make them understand that it is not alright to do this when there is efficient mechanism for checking the veracity of truth.

6. Conclusion

Custodial deaths and violence is not good for law and order and seriously work as an obstacle in progress of human rights. Human rights are very important when we hear all the news of self interest and greediness by the people so human rights are the rights which actually have the capacity to help us. These rights are not binding but as human beings we are born with certain rights and it should prevail under any circumstance.

The Supreme Court from time to time condemned this and ordered the executive department to avoid this kind of interrogation technique where other person is entirely ripped out of his basic human right that is right to life. The movie culture promotes third degree in movies

³¹ Supra note 8, p.6

³² *Ibid*

we have seen how a so called honest police man tortures the criminal and take law in his hands and definitely movies have impact on our society. The ultra wire killings of accused should also be condemned.

In the one of the prominent Judgements of Supreme Court it ordered the installation of CCTV cameras in police station and with proper audio and visual functions. It also ordered the cameras which have this night mode function so that the activities happening in night time are also covered. Despite the issuing of guidelines not many police stations are following it. The problem with us is that we are bad at implementation.

So, it can be concluded that violence in any form should be resisted and discouraged and custodial deaths bring serious shame for the nation which is glorifying about its democracy and rights.

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