

Custodial Death: An Analysis Of Legal Provision Under Indian Law

Running Title: - Custodial Death

Gurdas Singh Class^{1*}

^{*1} LLM, ROLL NO.2012031008

***Corresponding Author: - Gurdas Singh Class**

Abstract:-

The custodial is universal problem not only in India. Under the Indian Criminal Law is provides that the person who is accused of any offence shall be taken into the custody of police and after expiring of period of police custody, the accused shall be sent to judicial custody. The Code of Criminal Procedure provides procedure to arrest the accused and also provide proper administration of justice. In simple language, the meaning of custody is provided under the different laws. But, in the criminal law, the meaning of custody is that the person is in custody of law enforcement agencies. The person in confinement also has rights during his custody period. The constitution of India provides protections to the prisoners under article-20, 21, and 22 etc. The other criminal law like Indian penal Code 300, 330, 331, 348 provides punishments for the offence against prisoner. The Indian Evidence Act, 1872 provides protections under section 24, 145,114-B. The article studies the legal provisions under the different criminal laws. It also analyzes the recent case laws dealing with the rights of prisoners. In this article various quotations of judges of Supreme Court also studied.

INTRODUCTION

It is well settled law that when any person commits an offence punishable under the penal laws, shall be taken into custody by the police. The question is why the police take person into their custody. The police take accused into their custody for the investigation of the matter. The universal declaration of human rights played very important role for saving life of human beings. UDHR provides that there shall not be discrimination against any human being on the ground of sex, caste, race etc and everyone shall lead his life with human rights and violation of it is prohibited. The UDHR declaration had started to effect from very first day of its commencement and through it many of people saved their life, who were already in custody from torture, cruel treatment, inhuman behavior, etc. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ¹ Moreover, the definitions of custody are:

According to an Oxford Dictionary ², the legal right or duty to take care of or keep somebody. The official act of law enforcing agencies to holding of accused or convicted person in criminal proceedings, which begins with the arrest of accused. ³

LEGAL PROVISIONS RELATING TO CUSTODY AND CUSTODIAL DEATHS

It is the duty of police to enforce law and order in the state. The police derive their powers for implementing law and order from statute. The maintenance of law and order cannot be maintained without law in the state. Justice Lohati R,C (Chief Justice of India) provides that the duty of police starts from the very beginning i.e. From his arrest. The police is under obligation to enter his name, residence, and other relevant particular in the police diary and produce him before the judicial magistrate within the period of 24 hours. ⁴

What is death in custody?

¹ Article 2 , <https:// www. un. Org/ en/ about - us/ universal- declaration- of- human- r ights.>

²<https:// www. Oxfordlearnersdictionaries. co m/ definition/ english/ custody#: ~: text=custo dy-, noun, taking% 20 care% 20 of% 20 so mething% 2 Fso mebody>

³<https:// legal- dictio nary. Thefreedictionary. Com/ custody.>

⁴ Justice Lohati R. C, C. J , Rising expectation n of people from Judici ary, 2 0 04 It is an illegal act, where the person confined in the police custody had been died by torture, cruel or inhuman behavior. There is no specific definition of custodial death as it is not defined anywhere in the law. In case of shri **D.K basu and Ashok K. johri vs. State of West Bengal and State of U.P 18/12/19961** , In these cases Hon'ble court define custodial torture as "it is done on human being by another human being where to impose his will, it is done by "strong" over "poor". In present scenario the term "torture" is become synonymous to darker side of human civilization.

Difference of Police Custody and Judicial Custody. Police custody.

- A person who has committed a cognizable offence, or against whom a reasonable complaint has been made, or

credible information has been received.

- A person who is declared a proclaimed offender
 - Who has some stolen property in his possession
 - A person who is a deserter from the Armed Forces
 - A convict who has breached the terms of his parole .
 - Where a police officer is satisfied that an arrest is necessary to prevent a person from committing any further offence
 - And proper investigation of the offence
 - To prevent a person from causing the evidence of the offence to disappear or tampering with such evidence
- Section 41A was added to the Cr.P.C which gives power to a police officer to issue a notice to an accused to appear before him when a complaint is filed against him. If the accused complies with the notice and cooperates, then the person is not required to be arrested.

Judicial Custody

Judicial custody means when suspect or accused person is kept or lodged in the jail by the order of concerned magistrate under section 167 of CRPC.

In order word, when accused person or suspect is kept under the custody of Magistrate not under the custody of police.

In simple term, when accused is detained under the purview of judicial magistrate and lodged in jail of central or state prison and under judicial custody police have to seek permission from court for interrogation.⁵

Reasons for custodial death.

1. No proper search of arrested person before entering in the lock-up for interrogation resulted such person get⁵ Pracheen Raj, law student, Law College Dehradun, i lkogretim - o nline. Org.chance to commit suicide, by cutting their nerves or eating poison substance.
2. Suicide in police custody by the arrested person is only the reason negative attitude.
3. Police know only language of force; they never adopt other method while conducting interrogation.
4. No proper treatment, medicine provided to arrested person in the lockup
5. There is no transparency in their procedure, as it seems sometimes among police officers, they showing their unity so that no action will be taken against such officer.
6. Feeling of hatred in the eyes of people in the society as well as police, they never trying to understand that accused is still innocent until it is not proved guilty by the court.
7. As police officer is filled with burden to solve the cases as soon as possible so that they work on next case, which resulted lack of patient and tried to impose their will on arrested person so that, arrested person give statement according to them.⁶⁶ *I bi*

STATUORY PROVISIONS UNDER SPECIAL LAWS

The prison Act, 1990

The duty was imposed on government to transfer lunatic or unsound prisoner from prison to lunatic asylum, so that proper care can be made. If in case High court recommend for the free pardon to specific prison to government then such recommendation permit him to be at liberty at their own cognizance.

The transfer of prisoners Act, 1950

India is one of the second leading country in population and crime rate is also increasing day by day, as compare to south India, north India makes larger contribution in case of heinous crime, near about 60% of murder and rape are committed in north side of India. The people of India are always ready to face a future challenge, that's why provision was made to transfer prisoner from one state to another state, as create problem to keep over- populated prisoner in one place. In case **Smt. Nilabati Behera vs. State of Orissa and Ors** it was held by Hon'ble Court, that every person has right to life which include prisoners also conformed under Article 21 of Indian Constitution. Prisoner are also having all the basis of fundamental rights and even police have not right to snatch away their life, it is a duty of police to obey the law and also protect the fundamental rights of prisoners. Moreover, court took further reference of Article 9(5) which state about the right of compensation in case of victim of unlawful arrest and perform torture on victim.

In case **Yashwant and others vs. State of Maharashtra** the facts of this case are, there were nine police men and all were charged for custodial death under Section 330 of Indian Penal Code. Later on, the Hon'ble court held liable to all nine police men for the same and also state that, enhancement of punishment is important of police officer as it give lesson to entire police unit, that such act is illegal act and help in reducing custodial death in future.

In **Manna vs. people of illinois** it was held by hon'ble Supreme court of US, "once stated that life is not merely animal

existence” in simple word, Article 21 cover right to life, but this Article is not only protecting the life of person but it also ensures the live with dignity. Prisoner also have right to enjoy fundamental right in with reasonable restriction and even state is not allowed to such right from them, other than established by law .