



CUSTODIAL DEATHS IN INDIA

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ABSTRACT

"No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law," according to Article 21 of the Constitution..¹ The SC in the *Francis Coralie Mullin Case* observed that the ambit of article 21 includes "the right to live with human dignity and all that goes along with it".² However, it appears that these rights have not been effectively implemented for individuals who are in custody. Custodial death and violence are significant issues due to their flagrant disregard for basic human rights and infringement upon fundamental rights. The objective of this paper is to address a specific incident in accordance with the existing laws and judicial precedents. The prevalence of custodial torture and fatalities in India sheds light on the negative aspects of the country's criminal justice system, revealing the harsh treatment endured by individuals in custody that can ultimately result in their demise. The paper provides a categorical and concise explanation of the legal position.

Keywords: Article 21, Constitution, Death Penalty, Human Rights.

INTRODUCTION

One of the most perilous scenarios in a democratic society arises when those entrusted with the enforcement of laws assume the role of lawbreakers. The issue of police brutality during custodial interrogations is not exclusive to India. It is a widespread phenomenon across the world, taking

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¹ Indian Constitution , art. 21.

² Francis Coralie Mullin vs The Administrator, [1981] AIR 746.

various forms of mental, physical, and psychological coercion and the misuse of authority during the questioning of detainees. India has been a signatory to the "Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment" since 1997. However, it is noteworthy that India is among the minority of nations that have not yet ratified the convention. This paper is limited in its focus to the criminal legal system in India.³

The principle of Natural Justice, which safeguards human dignity and maintains the Rule of Law founded on Justice, Equity, and Good Conscience, is undermined as a result of the inappropriate utilisation of laws and authority. The Constitution confers a number of inherent rights that cannot be surrendered, and designates the Supreme Court as the safeguard of said rights. The Supreme Court has established a body of legal principles pertaining to custody, commonly referred to as custodial jurisprudence, by means of a sequence of judicial decisions. Nonetheless, it appears that the impact is merely weakened, given the rising trend in the incidence of custodial deaths and torture.

The Supreme Court, in the case of *D.K. Basu vs State of West Bengal*, issued a set of directives known as the "eleven commandments" to safeguard individuals from any form of mistreatment by law enforcement officials during arrest and detention. However, the regrettable actuality that prevails is not merely a minor deviation, but rather a complete inconsistency of the aforementioned. Another implication that may arise is the occurrence of suicide within correctional facilities.⁴ It is a preventable but a neglected problem in India. Persons under custody face challenges to meet even the basic human requirements.

BHIMA KOREGAON CASE

On January 1st, 2018, a conflict between the Maratha and Dalit groups resulted in the detainment of 16 individuals, including individuals from academic, legal, and social justice backgrounds. These individuals were arrested under the UAPA law, which is known for its controversial nature. They were accused of having connections to a Maoist armed group that seeks to overthrow the democratic government and assassinate the Prime Minister. The Supreme Court has directed the special NIA court to commence trial, as the charges have not been framed even after a period of

³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (OHCHR, 10 December 1984) < <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> > accessed 10 May 2023.

⁴ *D.K. Basu vs State of West Bengal* [1997] AIR 1997 SC 610.

four years subsequent to the arrest. Recently, a significant number of accused individuals have been granted bail or placed under house arrest by the court.

Father Stan Swamy, a Jesuit priest, has been identified as one of the accused who has been charged under the Unlawful Activities (Prevention) Act -UAPA. He is often referred to as the oldest prisoner charged under this draconian law. Paradoxically, the individual in question was an advocate for human rights, yet was deprived of his entitlement to life and personal freedom, as stipulated by Article 21 of the Constitution.

The incarceration of the individual in question for alleged involvement in a Maoist plot that resulted in caste-based unrest in the Bhima-Koregaon locality during the COVID-19 pandemic, coupled with repeated denial of bail, elicited widespread public indignation. According to official statements, the detention and confinement of Father Stan Swamy were carried out in accordance with due process of law by the government. The expression of indignation following his demise illustrated evident dissensions. Renowned historian Ram Chandra Guha characterised his demise as a "judicial execution while in custody."

A recent report by Arsenal, a digital forensics firm based in the United States, has indicated that the discovered evidence was deliberately planted. This evidence serves to demonstrate that Swamy was the subject of a systematic targeting and framing campaign due to his vocal advocacy for the rights of tribal communities, which were perceived to be in conflict with the interests of the state.

NEGLIGENCE OR NATURAL DEATH?

The denial of a straw sipper to Stan Swamy by prison officers at Taloja jail due to his inability to hold a glass of water without shaking, attributed to Parkinson's disease, was reported. The police's conduct, characterised by a lack of humanity and empathy, cannot be justified under any circumstances. Stan Swamy's demise can be ascribed to the State's disregard. The special NIA court failed to address the declining state of his health, which may have been exacerbated by potential undisclosed forms of mental, physical, and psychological abuse during his detention. Ultimately, these factors contributed to his untimely death. There exist numerous instances of custodial deaths and torture that exhibit the abuse of power in a disorderly and ruthless manner. The precise figure of unregistered individuals remains unknown, thereby exacerbating the susceptibility of marginalised populations to inequitable treatment.

ARTICLE 21 AND CUSTODIAL DEATHS

The Supreme Court has been gradually broadening the scope of the Right to Life under article 21. This right cannot be revoked "unless in accordance with fair, just, and reasonable procedure established by law" as provided in the *Maneka Gandhi case*.⁵ The question arises whether custodial violence and custodial deaths can fall under this exception or not. The answer is unarguably in negative. However, there exists huge differences in theory and reality.

Criminal Justice system aims to maintain law and order in the society. Police has been given authority to use coercive force but to a limited extent. But this is a very unregulated immunity. Justice Krishna Iyer in *Prem Chand vs Union of India* pointed out the same fundamental question- "Who will Police the Police?"⁶

It is lamentable to note that we remain at the same juncture, contemplating the identical circumstances, if not exacerbated. There has been an increase in reports of alleged police misconduct towards incarcerated individuals. The escalating frequency of such occurrences has garnered nationwide attention towards the statistics of custodial fatalities and aggression, which illustrate the harsh treatment experienced by detainees and a violation of their rights by those entrusted with safeguarding them. According to recent reports, there has been a total of 4,484 fatalities while in custody within the past two years, resulting in an average of approximately six custodial deaths per day. According to official statistics, there have been 2152 deaths in judicial custody and 155 deaths in police custody. This issue is of significant concern.

CONCLUSION

The inalienable right to life and personal liberty is contradicted by the significant number of instances of custodial violence and fatalities. The *Rudul Shah vs State of Bihar* case, as decided by the Supreme Court, established that the state bears the responsibility of providing compensation to victims in the event of a violation of any fundamental rights.⁷ Supreme court crystallised the right to compensation in cases of custodial death in *Nilabati Mehera vs State of Orissa*, that has also been recognised internationally through the International Covenant on Civil and Political Rights.⁸ But the question stands- Can this actually be compensated?

⁵ *Maneka Gandhi v. Union of India* [1978] AIR 1978 SC 597.

⁶ *Prem Chand (Paniwala) vs Union Of India (Uoi) And Ors.* [1981] AIR 1981 SC 613.

⁷ *Rudul Sah v. State of Bihar* [1983] 4 SCC 141.

⁸ *Smt. Nilabati Behera Alias Lalit vs State Of Orissa And Ors.* [1993] 1993 AIR 1960, 1993 SCR (2) 581.

Preventing torture in detention and enforcing strict adherence to regulations regarding custodial fatalities are among the NHRC's primary objectives. However, the efficacy of the aforementioned remains subject to scrutiny. It is imperative to implement reforms in the lives of individuals who are under judicial custody. To achieve this objective, it is imperative to implement legitimate measures aimed at disseminating information to the populace regarding their basic entitlements. The implementation and upkeep of closed-circuit television (CCTV) systems for the purpose of monitoring law enforcement activities. It is imperative for the judiciary to implement stringent