

## Deaths in Police Custody : Misfortune or Merciless Assault

In the words of Babasaheb Bhimrao Ambedkar “ if I will find any misuse of the constitution then I shall be the first one to burn it” and as per the hon’ble justice Krishna Iyer, if there is no Article 21 in the Constitution then also every human being is having a natural right i.e. Right to Life. In the preamble of the constitution itself we have mentioned that we the people of India giving this constitution to ourselves which means that

It is a pertinent to say that the crime in the society is sine qua non i.e. embodied with the society. The history of custodial death can be traced back from the colonial times but after adoption of the constitution of India, it is duty of state to protect the very basic fundamental right of human but recently, we are witnessing two very known case i.e the case of custodial death of “*Manoj*” and burning case of custodial death of inmate ‘*Ankit Gujjar*’, which became a subject of debate, discussion and discourse of the time where the person in custody assaulted to death by police. *In later case of ‘Ankit’s’* death in police custody the hon’ble High Court of Delhi asked for a status report to be submitted before the court by Tihar jail Authority and in the former case the high court of Orissa directed the state to pay compensation to the parents of deceased (*Manoj*) which was a sum of rupees Five Lakhs and many cases are witnessed in which the court has directed for compensation because of custodial death due to negligence of police.

In India , in spite of all the human right laws, constitutional jurisprudence and of the courts, we often found that police is still using third degree method which results into illegal torture and sometimes custodial deaths which is serious drawback of the legal system, unable to remove these latches from system. Indian judiciary has given several guidelines from time to time to protect the person’s fundamental right who is in custody of police . The cases are as follows:-

- ***Joginder Kumar v. State Of U.P and Others 1994 AIR 1349: 1994 SCC (4) 260: -***

For effective enforcement of the fundamental rights enumerated in Articles 21 and 22(1) of the Constitution which requires to be recognized and protected, the Hon’ble Court issued the following guidelines:

- 1- The police officer shall inform the arrested person when he is brought to the police station of this right.
- 2- An entry shall be required to be made in the diary as to who was informed of the arrest.
- 3- It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

- ***Munshi Singh Gautam v State of Madhya Pradesh, Appeal (Crl.) 919 of 1999: -***

This problem of custodial torture and violence in Indian prisons by police was chief concern and the Supreme Court observed that:

“The de-humanising torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of the rule of law and administration of the criminal justice system...the concern which was shown in *Raghubir Singh* case more than two decades back seems to have fallen on deaf ears and the situation does not seem to be showing any noticeable change. The anguish expressed in the cases of *Bhagwan Singh v State of Punjab*, *Pratul Kumar Sinha v State of Bihar*, *Kewal Pati v State of UP*, *Inder Singh v. State of Punjab*, *State of MP v Shyamsunder Trivedi* and the by now celebrated decision in the landmark case of *D K Basu vs. State of West Bengal* seems ‘not even to have caused any softening of attitude in the inhuman approach in dealing with persons in custody’.”

- ***Yashwant And Others v. State of Maharashtra (2018) 4MLJ (Crl)10(SC): -***

The Hon’ble Supreme Court of India has upheld the conviction of nine policemen of Maharashtra Police in connection with custodial death case and extended their jail terms from three to seven years each. Reportedly, a bench of hon’ble Justices (Mr.) N.V. Ramana and M.M Shantanagoudar upheld the order and said that incidents which involve the police tend to erode people’s confidence in the criminal justice system. While enhancing the prison term of the policemen, the hon’ble court held that, “With great power comes greater responsibility.”. The police personnel were found guilty under Section 330 of the Indian Penal Code which involves voluntarily causing hurt to extort confession or to compel restoration of property.

In India, as per the report of *India Annual Report on Torture 2019*, 125 people died under police custody and the most common forms of violence include electric shock, hammering nails in the body, applying chilly power on different parts of the body, branding with a hot iron, inserting rods in the parts of the body, forcing legs apart, hanging upside down and merciless beating, etc. and the most disconcerting is that about 75% of these 125 deaths happened due to alleged torture or foul play, and about 20% died under suspicious circumstances that police cited suicide.

Another annual report of 2020 has been published by the National Campaign Against Torture (NCAT) which states that despite the lockdown from 24 March to 31 July 2020, India witnessed an increase in custodial deaths during the year and over one suicide every week because of alleged torture and violence in police custody.

And recently a data has been shared by *Mr. Nityanand Rai*, Union Minister of State for Home that during detention from 2017-19, 1189 person found to be tortured and out of which 348 lost their lives in Police encounters. This data is based on the information received from the National Human Rights Commission (NHRC), according to which 136 people died in police custody in 2018, 112 in 2019 and 100 in 2020. and when it comes to torturing the person 542 people were tortured in police custody in 2018, 411 in 2019 and 236 in 2020. *Mr Chakma* in his statement

stated that “*Police stations are increasingly becoming centers for suicide due to alleged torture. At least one person commits suicide every week due to alleged police torture. In 2020, the NCAT recorded 55 deaths by suicide as a result of police torture i.e. more than one suicide per week because of torture in police custody.*”

The development made by court, human right laws and policies, police reformations and many steps towards protections of rights of the accused or person in custody of police, we are far behind in protecting the very basic rights of an individual i.e. Right to life because the cases of custodial death are rising day by day and in the recent case of *Ankit Gujjar* in which the court is playing very active role in order to provide justice to deceased and we are hopeful that justice will be done. But this is high time to introduce some measures in order to regulate this torture and violence by police in custody and government should come in front against this inhuman and illegal activities because indirectly these activities are not less than *cold-blooded* murder by the agency which was created as savior and government should welcome and implement the direction which is given by the court in the case of *Paramvir Singh Saini vs Baljit Singh* for the installation of CCTV cameras with night vision in every police station and all interrogation should be in camera proceeding.

In the civilized nation like India the legislature and administrative should stretch their hands and protect the person from merciless assault because justice should not be done only but it should seem to be done and when it will be seem to every individual only then in true sense we can establish administration of justice and achieve true constitutional spirit .