

CUSTODIAL DEATH A THREAT TO HUMAN RIGHTS AND THE ROLE OF JUDICIARY***NAFIZ NASRIN¹****INTRODUCTION**

Custodial death it is not a new or recent concept in India Custodial death has been carried out since the times when India's sovereignty was in the hands of Britishers. Custodial death is death that occurs while a person is in the custody of law enforcement officials. Custodial death can occur due to various reason such as use of excessive force, neglect or abuse by the authorities it is a very worst and cruel from of the abuse. Two types custody can found one is police custody and other one is judicial Custody, in police custody an individual arrested by the police for committing any crime in this type of custody a detainee is held for not more than 24 hours in a lock-up at a police station during this time period the officer in charge interrogates the suspect on the other hand in judicial custody the accused is kept in the custody of the magistrate of the concerned area the accused kept in jail and the police officer is not allowed to interrogate the suspect in judicial custody unless the order that the interrogation is necessary for the case. Custodial death occur when the police officer ultra virus their power and torture the convicts beyond the limits to take the life of convicted person. This Custodial death occurred in police custody, judicial custody or in the custody of army and parliamentary source. It is a very heinous threat against humanity, police brutality and violence have exponentially gowns over the last four - five years. One of highlighted Custodial death across the world the death of George Floyd in the USA due to this Custodial death incident it led to a whole new movement 'The Black Life Matters'. Also the death of Jayaraj and Bennix in the custody of Tamil Nadu. It's emerged public sentiments and people voiced for an adequate mechanism to prevent this brutal torture by police. This incidents highlights the absence of adequate law in India against this brutal torture and people raised their voices to prevent such incidents and the need for anti – torture law against this heinous abuse done by the police officers. Custodial death it is a worst form of human right violations it has been held in plethora of judgements that just because a person is in the police custody detained or under arrest, does not deprive of him of his basic fundamental rights which is guaranteed by the Indian constitution. Article 20 provides the rights against conviction of offences also article 21 protect right to be free from torture also article 22 ensure that a person not subjected to any ill- treatment. The constitution of India calls for the safety of

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convicts and accused in the police and judicial lock-ups but the authorities such as police officer misuses their power or undermine such constitutional structures and carryout constitutional violence and torture.

THE REASON FOR RISE IN CUSTODIAL DEATH

Custodial violence it seems to be on rise every time, the introductory causes of custodial violence and reason for which suspect abused by the officers, it can be, Work pressure, the police of India has to perform delicate and delicate task, we can say the reason before for continuing brutal torture by the police because of the work pressure. A bobby need to deal with crime and complaint not on bits of paper but in the raw and this leads to induce lot of pressure both from the public and government. Greed for Money, this the most spiteful reason for custodial torture a police officials use brutality to prize plutocrat from the suspect and innocent. This rapacity for plutocrat increased day by day, legal medium and the nature of substantiation grease the process of making SHO veritably important which give him unintended power to prize plutocrat from the suspect. corrective Violence, the reason for third degree system born out of wrong persuasions, the whole tenner of felonious Justice system is corrective and it leads to brutality in the nature of the police official, and numerous police officer see their brutality as extension of the corrective part of the association. Lack of Proper Training, training plays significant part and the lack of proper training leads to third degree system, according to the Gore Committee on Police Training 1972 stated the fact that the training should be inculcate the right station towards the public avoiding brutality and gratuitous harshness. Other data or reason for custodial torture can be sexual weakness, truculence etc. manly police attract toward contrary coitus interneer, for satisfied their pleasure the use force, brutality and committing rape in guardianship period. Under IPC 1860 an correction has been made to give discipline for those officers who misuse their power and committing similar offence.

REMEDIES AVAILABLE FOR CUSTODIAL DEATH IN INDIA

Custodial Death and Constitution

Article 21 which provide Right to Life and Personal Liberty though this article not expressly mention anything about custodial death. This article stated that no person shall be deprived life and personal liberty except procedure established by law, this right includes constitutional guarantee against torture, assault, injury thus act as a safeguard against

custodial torture. Article 20(1) according to this article of the constitution no person shall be convicted of any offence except for violation of law in force and this article prohibits the farming of ex-post-facto criminal laws. Article 20(2) this article prohibits double Jeopardy, according to this article no person shall be punished for the same offence more than once.

Custodial Death and Indian Penal code

Section 302 of the Indian Penal Code

Under this section during the custody of a suspect if a police officer liable for the death of suspect then he or shall be charged with murder and would be punished under this section of IPC.

Section 304 of the Indian Penal Code

According to this section a police officer can be punished for culpable homicide not amounting to murder and section 304A this section can applied if the Custodial death occurred during the custody of police due to the negligence by the police officer.

Section 330 of the Indian Penal Code

This section deals with punishment for causing voluntary hurt in many situation it was observed that police officer resort to violence and torture the suspect to obtain confession from the suspect and according to this section for committing such offence the police officer would be liable for punishment.

Section 331 of the Indian Penal Code

This section deals with the punishment in case grievous hurt is caused to the accused during the custody period it will amount punishment to the police officer for committing such offence.

Custodial Death and Judicial Remand under CRPC

The CRPC contains certain provision relating to Judicial remand and custody of an individual.

Section 57, according to this section of CRPC (Code of Criminal Procedure) a police officer cannot detained a suspect or a parson not more than 24 hours if there is a necessary situation where arises wherein a suspect need to detained for more than 24 hours then the officer need

to a special permission from the magistrate under section 167 of CRPC, without the special permission the officer can not detained a suspect not more than 24 hours. The section 57 known as remand or pre-trial detention, remand has two conditions first one is the send the accused back to the authority and the second one is to send the cases from appellate court to lower court. Section 167(2), section 209(b) and section 309(2) this section empowers the court or gives to right to the court to remand custody of an accused. If there is situation where the investigation could not be completed within 24 hours then the accused must be forwarded to the Judicial Magistrate and the Judicial Magistrate cannot extend the remand period not more than 15 days. According to section 167(2) the Magistrate remand an accused for term of 60 days maximum for offences that are not punishable with life imprisonment. In case where the offence that are punishable with life imprisonment, death or imprisonment up to 10 years or more the Magistrate can remand for maximum term of 90 days if the maximum term of remand exceeded the suspect shall be released on bail.

Custodial Death and Indian Police Act

Section 7 of Indian Police Act

This section empowers or give the power to the senior police officers to dismissed or suspend any police officer in case the officer found in negligent in discharging the duty.

Section 29 of Indian Police Act

According to this section if any police officer found for carrying out their duty negligently then he or she will be penalized under this section and impose penalty includes imprisonment up to three months.

Custodial Death and Indian Evidence Act

Section 25 of Indian Evidence Act

This section protests accused from investigating agencies, according to this section if a confession made by the suspect before the police officer it can not be used to prove an offence against him.

Section 26 of Indian Evidence Act

According to this section any confession made by the suspect in the police custody in the absence of the magistrate would be inadmissible in the court of law.

DOMESTIC CASES RELATED TO CUSTODIAL DEATH

Jogindar Kuman v State of U.P and others, 1994

It's landmark case where court issued many guidelines to insure the protection of the rights which is guaranteed by constitution of India under article 21 and 22(1) the court observed that this rights need to be honored and must be defended. The guidelines enforced by the court those are The arrested person needs to be Informed about his or her right by the police officer. And, article 21 and 22(1) should be rigorously honored and should be executed. Also the Magistrate should be determined rainfall all demand fulfilled by and maintained or adhered by the police authority. This judgement is an important substance which recognizes the abecedarian right which is guaranteed by the Indian constitution and the introductory mortal rights of an individual and provides a medium of guarding them.

Yashwant and others v. The State of Maharashtra, 2018

In this case the court set up that the police authority involves in the incident and to be liable under section 330 of the Indian Penal Code for causing voluntary hurt to wring a concession from the victim. In this case nine bobbies of the Maharaja police who were indicted for causing a custodial death in 1993, the high court Bombay doomed them imprisonment for a term three times and the Supreme court extended the imprisonment for a term three times to seven times. This extension of the discipline is justified in the case because of the nature of the offence Committed. This judgement make an remarkable substantiation that the bar would not entertain any cases which beget violation of mortal rights.

INTERNATIONAL CASES RELATED TO CUSTODIAL DEATH

Aydin v Turkey, 1997

In this case the European Court of Human Rights was observed that the actions of Turkish police personnel were unjustified, this case regarding the alleged rape and ill- treatment of female arrestees, aydin. The court observed that article 2 and 13 of the European Convention on Human Rights and Fundamental Freedoms breached by the police personnel or police authority and the authority or personnel liable for breaching this article.

Maria Elena Loayza Tamayo v. Peru, 1997

In this case the victim was inhumanly treated and repeatedly raped and torture by the officials. The victim was detained by National Counter – Terrorism Bureau in this period of detention she was inhumanly tortured by the officials then she lodged a complaint against those officials in the Inter- America Commission of Human Rights accusing officials for violating her human rights, then this case transferred to Inter- America Court the court observed that article 6,7,8(1), 8(2), and 8(4) of the American Convention on Human Rights violated by the officials and further court ordered the release of the victim.

INTERNATIONAL LAWS WHICH DEALS WITH HUMAN RIGHTS

Mortal rights is introductory rights of any mortal being and abuse of mortal rights always concern a global issue around the world, each country has It's own legal medium for preventing this abuse. There are various international safeguards or medium which give safety or protection to the arrestee and cover their rights.

Universal Declaration of Human Rights, 1948 (UDHR)

According to UDHR(Universal Declaration of Human Rights) every person should be treated as innocent until the individual set up shamed. And article 5 of UDHR stated that no person should be tortured or treated with atrocity.

International Convention on Civil and Political Rights, 1966 (ICCPR)

ICCPR help any inhuman treatment with captures also ICCPR stated that No individual shall be arbitrarily arrested or detained article 6 of ICCPR give prevention on atrocity, torture or any inhuman treatment by the officers.

United Nations Standard Minimum Rules For the Treatment of Prisoners, 2015

Section 6 of this convention give prevention on any discrimination against captures.

Section 7 give that a register should be maintain of the prisoner which containing the details of the captures which contains the reason behind his or her action and the day of the admission and release from the cell.

THE ROLE OF JUDICIARY IN CUSTODIAL DEATH IN INDIA

Temporal, Socialist, Sovereign and Democracy Republic are the pillars of India. In a popular country police are present to cover the public rather also induce torture on them, the purpose of the police is to give a safe orderly society. When law makers and the enforcers turn into law teacups and the protection of mortal rights turn persecutors also it becomes trouble to the republic. Custodial torture is widely held a heinous crime against the mortal rights. The Hon'ble Supreme court has kept individual quality as a focal point in plethora of judgements.

In the case Prakash Kadam Vs Ramprasad Vishwanath Gupta, where Supreme court held that if crime committed by ordinary people ordinary discipline should be given but if any crime committed by any police official also much harsher discipline must be given to them because they're the person who supposed uphold the law. In the case Kishore Singh Vs State of Rajasthan, where the Supreme court held the use of third degree torture system it violates article 21 of the constitution. Also another important case D.K Basu Vs State of West Bengal, where many guidelines assessed by the Supreme court and established a morals needed to followed during arrest and detention. originally it's duty of a police officer while not to use third degree system while disquisition of indicted. The legislation must borrow the recommendation which suggested by the law Commission report by fitting section 114-B. Article 21 and 22(1) of the Indian constitution must followed by the police officers. mindfulness must ne created to the arrestee and also court give certain preventative measures that should be followed by the police officer .

CONCLUSION

In a democratic country it is the duty of the state to protect and promote the human rights, all state institutions whether they are the police department, army, judiciary or civil administration have a duty to respect human rights and prevent the human right violations. The duty of the police is to maintain the law and protect the people they are the protectors of the law and have both legal duty and moral obligations to upload human rights. The constitution is the Supreme law of the country and the constitution give basic human rights to all the citizens of India also the Supreme court has over the years explained and elaborates the scope of fundamental rights. India should rectify UN Convention against torture, it will mandate a systemic review of colonial rules, method, arrangements for the custody and treatment of person subject to any arrest, detention or imprisonment.