

Protective Measures Against Custodial Crimes

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Abstract-

Custodial crimes are just like any other forms of crimes but it is done in custody. The arrest of a person does not give authority to police or government officials to use the acts of violence, torture, to commit rape or death. Due to lack of knowledge, many arrested people become victims of custodial crimes but if they remain vocal about their rights and if they get good legal help then not only, they can protect themselves from custodial crimes but they can get guilty policemen or government officials to be punished also. It must also be noted that there is a strict liability on the State to provide compensation to the victims of custodial crimes. This article, with the use of doctrinal method, discusses about the already existing protective measures against custodial crimes and it further explains the new measures which can be taken to improve the current laws and procedures used for preventing custodial crimes.

Introduction

The issue of police brutality is not only a problem in India but a serious issue all over the world. Apart from control over citizens, it is also important to control the Police through proper laws which must define the limits and boundaries of Policing, if this control is not existing in a country, then the police can adopt an arbitrary approach through which they can arrest and torture anyone, and people may start fearing to raise voices against unruly behaviour of police. In this situation, the police can mostly use their arbitrary powers against poor, oppressed and marginalised people. Sometimes ago, the issue of "BLACK

LIVES MATTER" had become so popular all over the world which was related to the death of a Black American person named George Floyd who was brutally tortured during his arrest by a police officer, the impact of unnecessary force used by Police was so dangerous that George Floyd died on the spot where he was arrested. This issue became a big headline all over the world, everyone started blaming the American police for using unnecessary force against black people and in this way, it resulted in a campaign regarding 'blacks live matter'. Similarly, there are many such issues which have happened in India also where many people have been illegally arrested even for petty offences and later, they were seriously tortured in police custody. Even if it was a case of legal arrest then also in several cases police has been accused of using unwanted force on the accused person to humiliate him for the alleged crime or to make the confession related to the alleged crime. The use of force to humiliate and oppress the arrested person is totally illegal while Confession in police custody is not admissible evidence¹, in this way enforcing a person through the act of torture and physical violence to admit a crime is also an illegal act. Even if the legal routes are followed for confession before a Magistrate then also it is essential to make sure that the confession is not forceful.² If an arrested person is not aware about such laws and if he is not provided proper legal help then it is highly possible that he can become very vulnerable for custodial crimes. In this regard there are many laws and guidelines which have been made to eliminate the cases of custodial crimes but either they are not exactly accurate or there is too much laxity in their implementation, hence improvements of the current situations with implementation of latest measures with new remedies for prevention of custodial crimes are very important.

Measures which have already been taken to prevent custodial crimes

India is a democratic country where the principle of equality has been provided as a fundamental right to every person. This fundamental right imposes a duty on the government to treat every person with equal rules and procedures. Even if the person is arrested then also that person must be given

¹ Section 25 & 26, The Indian Evidence Act, 1872

² Section 164(2) & (3), The Code of Criminal Procedure, 1973

all the opportunities to prove his noninvolvement in the concerned crime for which he is arrested, and all the laws made for providing justice must be applied in equal manner. Treating a rich and influential person with a great amount of care and mistreating and torturing a poor person by forcefully arresting him is a clear violation of rule of law and is an example of mutilation of the principle of equal opportunity to prove innocence of the accused in a crime. The criminal justice system even has provision to provide legal aid to an arrested person who cannot afford a lawyer to defend him,³ similarly there are many provisions in Indian criminal justice system which try to provide equal opportunity to every arrested person to prove his non involvement in the crime and thereby protect him from various kinds of oppressions & tortures which he can face during defending him. Custodial crimes are those kinds of oppressions and tortures which a person can face if is he not provided proper legal help when he is alleged to have committed a crime. This principle of equality plays a very important role in protecting a person from the violence and crimes which are done by the authorities of the Government. In this regard the government is responsible for any unjust things happening with a person who is taken into custody and only police cannot be blamed for such crimes. Protection against custodial crimes is one such issue in which the police and prison authorities, who represent their State Governments, are said to be involved in committing crimes on arrested people and in this way the State Governments have to take responsibility for any commission of custodial crimes in any forms. The Seventh Schedule of the Constitution of India makes the State Government to control the criminal justice system in their own territories⁴. Both the Police and prison systems are the subjects of states⁵ and if any wrong happens with the police and by prison authorities then it will be a liability of the concerned state government which possesses the control over police and prison authorities. Seeking compensation from the state for custodial crimes is a right of victim and his family members. In the case of Nilabati Behera vs State

³ Article 39A, The Constitution of India, 1950

Section 304, The Code of Criminal Procedure, 1973

⁴ Entry 1- Public Order, the state list in the seventh schedule of the Indian constitution, 1950

⁵ Entry 2- Police, Entry 4- Prisons, State List Seventh Schedule, The Constitution of India, 1950

of Orissa⁶, a 22 year old person, named Suman Behera, had died in police custody, and the Supreme Court took suo-moto cognizance of the matter when a letter regarding justice for victim was sent by his mother to the SC. The SC declared that compensation in such cases can be asked by filing a writ petition under Article 32 or 226 of the constitution and the strict liability of the state will imply to give compensation to victims. A compensation of 1.5 lakh rupees by the SC was awarded to the victim's mother and the state government was asked to initiate legal actions against the culprits. In the case of Rudal Shah vs State of Bihar & another⁷, the SC provided compensation to the victim because he was illegally arrested for 14 years even after his acquittal from murder charges.

The constitution of India gives a person various freedom in the form of fundamental rights. Freedom to move from one place to another place is one of the important fundamental freedoms provided in Article 19(1)(d) of the Constitution.⁸ This freedom can be restricted according to Article 19(4) of the constitution⁹, but these restrictions must also be justified restrictions, for example- police can arrest a person without arrest warrant & impose restrictions on his movement only in cognizable offences and police can use only those powers which are defined in CrPC regarding arrests, the Police cannot use unnecessary, illegal and arbitrary means for arrest. The restrictions used by the Police must be justified by the laws of the country and the Police must follow all these laws when they take any person in their custody. Keeping knowledge and the following of such laws may provide enough chance to an arrested person to prove his innocence and protect himself from custodial tortures and violence. Commission of a crime is one such issue because of which a person can be detained by the Police and later through court proceedings the crime can be proved, and the accused person can be imprisoned for a longer time. But it is an omnipresent principle in the criminal justice system that an accused must not be assumed as guilty unless it is proven, hence all chances must be given to the accused to prove his innocence. Not

⁶Nilabati Behera vs State of Orissa: 1993 AIR 1960, 1993 SCR (2) 581

⁷Rudal Shah vs State of Bihar & Another: 1983 AIR 1086, 1983 SCR (3) 508

⁸Article 19(1)(d), The Constitution of India, 1950

⁹Article 19(5), The Constitution of India, 1950

only the accused person has right to prove his innocence, but he has right to get bail and right to protect himself from arbitrary tortures also. As said above that the police has power to arrest a person when it is alleged that he has committed a crime but this power of arrest must be utilised by following all the relevant provisions of CrPC, in this regard a the police has to first of all check whether the alleged crime is a cognizable or a non-cognizable offence then they have to check whether the alleged offence is bailable or non bailable offence. If the alleged offence is cognizable offence then the police has power to arrest the accused person without an arrest warrant,¹⁰ but if the alleged offence is non-cognizable offence then the police must have to bring an arrest warrant for arresting an accused person.¹¹ An arrest will be known as an illegal arrest if police has not followed the set rules for arresting an accused and if a person has been arrested in an illegal manner then he has right to approach the higher courts through a writ petition of Habeas Corpus to get him released from that illegal arrest. The accused person can demand compensation also for his illegal arrest, also he can demand for the legal actions against the guilty cops who were behind his illegal arrest. Even if a person has been arrested in a legal manner, then it is a set rule that the arrested person cannot be kept in custody for more than twenty-four hours¹² and it is the duty of the police that the arrested person must be brought before Judicial Magistrate within twenty hours of arrest. If the police want to keep the person in custody for investigative purposes for more time, then they can demand police custody for the arrested person¹³ or the court can grant judicial custody. The arrested person can demand for the grant of bail in bailable offences and no person must prevented from seeking bail in a bailable offence while in non-bailable offences it is up to the discretion of the Police Station's officer in charge or up to the discretion of the court to grant bail, in this way the arrested person must honestly put all his credible arguments before concerned authorities which can prove his non-involvement in the crime, this knowledge and action can help the arrested person to get bail even in those alleged offences which are non bailable offences.

¹⁰ Section 41, The Code of Criminal Procedure, 1973

¹¹ Section 155, The Code of Criminal Procedure, 1973

¹² Section 57 & 76, The Cide of Criminal Procedure, 1973

¹³ Section 167, The Code of Criminal Procedure, 1973

One of the prime reasons behind the custodial crimes is to torture the arrested person in such a way that he can explain the process of commission of that alleged crime for which he is arrested, it makes the police to extort confession from the accused. The torture can make the arrested person to make some self-incriminatory remarks which can be very vital for police to prove that crime. But an accused person has fundamental right according to Article 20(3)¹⁴ of the Indian Constitution to not make any self-incriminatory remarks, also the confession before police by the accused is non-admissible evidence. Even if the accused person is willing to confess a crime, then the confession must be made before a Magistrate according to section 164 of the CrPC and this confession must be a voluntary confession without any force to ask an arrested person to give confession. Section 164(2) makes a Magistrate to explain to the accused that there is no boundation on the accused to give confession and it must be explained to the accused that the remarks made in confession by him can be used as evidence to prove a crime. It is made sure in the section 164(3) that the accused if explains before Magistrate that he is not willing to make confession then that accused person must not be sent to police custody by the Magistrate because sending the accused person to the police can make him vulnerable for custodial crimes and chances will become very high that police can use violence and torture to extort confession from him. In this way using force against a person to make him confess a crime is prohibited.

The force & torture for custodial crimes are mainly used by Police and there are many laws In India which prevent the police from using such force to extort confession from the accused or for other reasons. As said above that the custodial crime are same like other crimes but it is done in custody, these crimes can be punished in the same manner as the accused in other crimes are punished. In this regard there are many sections of IPC which can be applied for punishing custodial crimes like Section 330, 331 related respectively to punishment for causing hurt and grievous hurt and section 348 related to punishment for wrongful confinement or punishment to extort confession, section 220 related to punishment for maliciously confining a

¹⁴ Article 20(3) The Constitution of India, 1950

"No person accused of any offence shall be compelled to be a witness against himself"

person by an officer, section 302: punishment for murder, 376(2)(a): punishment for rape by a police officer. Imposition of penalties for neglect of duty by police officer has been mentioned under Section 29 of the Police Act, 1861. Investigating officers are prohibited according to section 163 of CrPC to use threats or inducements. These sections try to impose restrictions on the power of police during investigation, similarly there are many provisions in the Constitution, evidence act, CrPC, Protection of Human Rights Act, etc. which make police personnel's to not use the torturous activities to make an accused confess a crime. When the victim of custodial crimes cannot be provided justice at local level then a writ petition can be filed to the Supreme Court or High Court, or the information can be sent to NHRC regarding such violence. In custodial death cases, an inquest report must be made according to section 176 of CrPc and there is a provision for starting judicial enquiry regarding that death also.

The usage of torture has become a shortcut for policemen to find evidence related to a crime. This torture has many gruesome stages, when the preliminary stage in which normal torturous activities like talking with the accused in an unruly manner, giving him some slaps, imposing brutal fear of police, etc. are not successful then the third-degree tortures are used in which unbearable pain is given to the accused which makes him to admit the alleged crime. This unbearable pain is given to the accused till the time he confesses the commission of an offence. Sometimes the level of torture is so gruesome that it results in the death of the accused person.

The custodial crimes are not only used in the form of tortures to make an accused person to give self-incriminatory remarks, but it has many other dimensions also. The cases of rape & sexual violence are those kinds of custodial crimes which are very common and are simply done to sexually oppress the victim than to make her confess the crime, though sometimes the accused lady may confess a crime during her sexual oppression but many innocent ladies who are just suspects can become victims of sexual oppressions even if there is clear evidence exists concerning their non-involvement in any crime. The inhuman treatment, racist behaviour, caste-based oppressions with the arrested people also leads towards various kinds of tortures. The improper management of police makes the policemen to impose gruesome fear of

police and to unnecessarily use violence against the people in custody. The corruption is also one such issue in which policemen are bribed by someone to torture an accused person or the policemen are bribed to arrest any innocent person and then to impose torturous activities on him. Fake encounters are also one such brutal examples of custodial crimes. Fake encounters are done in many ways, for example a person was arrested then he was taken to police station but in the middle of the way it was stated by the police that the accused tried to flee from the custody, also he tried to attack the policeman, hence the police had to fire bullets in their defence in which the arrested person died. In many judicial enquiries and in many investigations by special agencies such kinds of stories have been exposed where police, in the enquiry, was found to be deliberately shooting the arrested person by taking him to some lonely places or by causing some fake accidents. These are some clear cases of murder which are punishable through section 302 of IPC.

The new measures which must be taken to prevent custodial crimes

There are many measures which must be taken from all sides, like government must frame more solid measures and strictly implement those, the police must respect the human rights of people taken in custody, the arrested person must take all measures which are essential for protecting his rights, and the citizens & other organisation must impose such kind of pressure that no one takes any steps which can enhance the cases of custodial crimes. Some effective measures in this regard can be-

1- Double standards of citizens-

Sometimes citizens become very furious and start criticising or protesting against police either on social media or on the streets when a person who had committed a petty offence was illegally arrested and killed in custody due to the torture of police, but most of these protesting or non-protesting people start praising the policemen when a person who allegedly committed a crime of rape, murder or other heinous offences, arrested and encountered by police or killed because of torture in police custody. These double standards of citizens must stop, because at one time protesting against police and raising issues of human rights and on the other hand praising police for illegal arrests and

encounters, shows the wrong approach of people where people want police to abide by laws and on the other hand, they want police to adopt arbitrary approach and provide immediate justice by breaking all the set laws and procedures. The citizens must believe in the concept of quick justice through the procedure of courts not in the concept of immediate justice by the police. If citizens want to protest against police brutalities, then they should protest against the pending cases in courts and too much time taken in trials also. The delays in justice in courts have made people to seek immediate justice from police which is making police more arbitrary. In this way custodial crimes against an accused in petty offences or serious offences both must be criticised.

2- Need of more efficient Legal aid system- When a person is arrested it is his immediate right to be defended by a legal practitioner who can be chosen by the arrested person himself¹⁵, if the arrested person is not able to arrange a lawyer because of lack of money then he can ask for legal aid which can be provided by the state for free but this legal aid in most of the times provided very lately and due to such delays the arrested person already suffers a lot tortures in the custody. Many times, the lawyers providing legal aid are not efficient enough to keenly defend the arrested person. The lack of efficient lawyers in the system of legal aid can be improved by paying them good fees and it must be coupled with some other well-furnished facilities so that good and experienced lawyers can show sufficient interest in defending arrested people through legal so that he arrested person can get immediate help.

3- Equal opportunity to prove the innocence of arrested people- Sometimes an arrested person is accused of committing too much heinous offence which makes everyone to hate him even when it is not proved that the alleged crime was committed by him, this not only infills hatred among citizens, but it also forces the lawyers to boycott the arrested person also. It is seen in many cases that no lawyers will defend the arrested person and they advise other lawyers also to boycott that person. This behaviour snatches the right from the arrested person to be defended by a lawyer. The arrested person must get

¹⁵ Article 22(1), The Constitution of India, 1950

equal opportunity to prove his innocence and lawyers must always be ready for such a thing. If the accused has really committed a crime, then it can be proven that he has committed a crime in the court, in this way everyone should talk about establishing a strong prosecution team instead of weakening the defence. The prosecution must be ready with strong evidence and the accused person must very quickly get the help of lawyers to defend him.

4- Compensation to Undertrials imprisoned for long times and their speedy trials-New measures can be taken to prevent the happening of custodial crimes cases in future but it must be made with some retrospective effects also. The people who have already suffered the cases of custodial crimes and who have already passed a lot of times in prisons as undertrials must be given decent amounts of compensation and their trial must be finished as soon as possible. The people who have not been able to get bail or defend themselves through a competent lawyer due to paucity of money must be provided efficient legal aid. All the undertrial who have already passed nearabout half of the time of the maximum punishment mentioned for that alleged crime in which they are detained, must be released immediately.

5- Ratification of UNCAT- India has only signed the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment but still India has to ratify this convention. This issue has been pending for a long time because India signed this convention on 14 October 1997 and still after 25 long years India has not ratified it. Not only India is quite late in ratifying this convention, but India took a lot of time in signing this convention also because this convention was adopted in 1987 and after a gap of ten years India signed it in 1997. The ratification will make India to adopt various measures to eliminate torturous activities related to custodial crimes and India will become bound by this convention.

6- Use of technology & storing data at different sources - The CCTV cameras are such tools which can show the atrocities of police, but the data of CCTV footage must be stored at various sources because if only police is in possession of the CCTV footage, then they can delete or destroy it. Through the Internet it is very possible to

telecast and store the CCTV footage at different sources. The live telecasting at different sources can also impose a big pressure on police to not cause any violence on the arrested person. Use of digital records and adding all the information related to the arrested people on computer with mandatory multiple storage of such data is also a good option.

7- Control of the Union Government over prison system-

The management of the prison system is a subject of state governments, but the problem is that there is no uniformity in the management of prisoners in the prison. In some states there is a positive approach towards human rights of prisoners while in some states there is no respect for such issues. Prison must not only be a place to detain a person but to reform him also, the status of reformation of prisoners also requires a similar approach from every state. The protection of human rights, the skill training of prisoners, the issue of reformation of prisoners and protection of prisoners from custodial crimes require a uniform law and that can only be possible if the subject of prison is transferred from state to the jurisdiction of the Central Government through a constitutional amendment. This measure will give a big boost to NHRC to conduct constant surveys and address the issue of prisoners without any jurisdictional issues with the States.

Conclusion

Article 21 of the Constitution of India says that it is the procedure established by law only which can snatch the life and liberty of a person, in this way any use of force, restrictions or punishments which are not mentioned in any substantive or procedural laws must not only be prevented to be used on arrested people but if they are already used against arrested person then the culprit must be punished and the arrested person must be provided compensation as well. India is a big country and there has always been a long discussion about a uniform system of policing in India. Police reforms regarding fair treatment with the people kept in custody is not only essential to be done but the positive measures taken must be updated from time to time also. Because every state has their own Police and their approaches are not like each other, there is a need for every state to deliberate on a uniform structure related to people kept in custody. The uniform structure will make the

states to perform better than the other states, in this way the Government of a state may get inclined towards decreasing the cases of custodial crimes. The State Governments in India have power to control their Police system and these state governments have authority to manage prison systems in their own territories as well. The control of state government over police makes the police personnel to follow all the directions of that State Government but sometimes the State Government itself starts following some arbitrary steps which is followed by policemen as well, by giving orders to policemen to act in an unruly, highly stricture and in an unjustified manner the state governments themselves can influence the happening of the cases of custodial crimes. So, it can be said that the state government must moot for any actions by police in a sophisticated way by making a balance between rights and reasonable restrictions. Apart from states liability, there are requirements of vigilant citizens, fair media, supporting & well qualified lawyers and many more.

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