

CUSTODIAL CRIMES IN THE FORM OF CUSTODIAL DEATHS IN THE STATE OF UP BETWEEN YEAR 2020 TO 2022

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Abstract- Custodial deaths are very brutal examples of Custodial Crimes. The cases of custodial deaths are continuously increasing in India and the state of Uttar Pradesh is found to be a big contributor in the total number of cases of custodial deaths. In this article there will be a critical examination of a data related to custodial deaths which was presented in Lok Sabha on 26th July 2022 by Mr. Nityanand Rai, Minister of State for Home Affairs. This data was prepared by National Human Rights Commission, and it showed that nearabout one fourth number of total custodial death cases in India have happened in UP only between 1st April 2020 to 31st March 2022. In writing this article, the Doctrinal Method has been used and in which various literary and many authentic online sources have been used.

Introduction

Custodial crimes are those kinds of barbaric crimes which are committed against a person who is brought into custody. These barbaric crimes are committed in the form of mental torture, physical violence, sexual assault, rape, sodomy or sometimes the brutality can reach to the level of causing death of a person who was brought into custody. "Arrest of a person leads to custody, which provides possible opportunity for commission of crime against the person in custody. Commission of a crime by a public servant against the arrested or detained person while in custody amounts to custodial crime. The custodial crime is preceded by arrest or detention."¹ Generally custodial crimes are related with crimes in police custody or judicial custody, but army or parliamentary custody are some more examples in which a person can be taken into custody and tortured. In this article, there will be a major focus on the cases

¹ Law Commission of India, 152nd Report: 1994, Chapter 2, para 2.1

of Custodial Deaths in police & judicial custody in the State of UP between 1st April 2020 to 31st March 2022.

Taking a person into custody and Custodial deaths in UP

After commission of a crime when a person is detained by the police then it does not mean that the Police can keep that person as long as it wants, the police have to bring the person within twenty-four hours before a competent Magistrate, from where the Magistrate may grant police custody or judicial custody or the arrested person can be set free. In many cases the accused people have been subjected to various kinds of violence's when they are arrested and taken into custody by the Police. Generally, the suspected & accused people are arrested by the police but if the attitude of police becomes too arbitrary then they can arrest anyone and torture them in their custody. Every state has their own police, and a state government plays a very key role in managing their police system. According to the distribution of powers between Union and States, as mentioned in the Seventh Schedule of the Constitution, every state has got the power to constitute and regulate the Police system in their respective states and to maintain the public order.² The Seventh Schedule also says that the power to manage and regulate prisons will be used by the respective State Governments. In this way the State Governments must control their Police and manage prisons³ in such a way that the cases of custodial crimes may be totally prevented. Among all states in India, Uttar Pradesh was found to be on the top of a list in which data related to custodial deaths were given. It was found that 501 people in the year 2021-22 have died in custody in UP. This data has revealed that the number of custodial deaths is continuously increasing in UP because in the year 2020-21 the number of deaths in custody were 451 which increased by 50 more deaths in the year 2021-22. Only in some rare cases the media raises any particular issue of custodial crime, or the opposition government causes protests or public outrage only when a person from their side was subjected to custodial torture or death but generally Custodial crimes in India are either ignored by media or the opposition government only uses the concept of cherry picking in which it raises such issues only which suits their political propaganda. Sometimes the concept of immediate justice also influences the cases of custodial deaths. In some brutal cases the encounter of the accused has got a big

² Public Order in Entry 1 and Police in Entry 2 of the State List in the Seventh Schedule of the Constitution of India, 1950

³ Prisons in Entry 4 of the State List in the Seventh Schedule of the Constitution of India, 1950

support from the public in the name of immediate justice. Killing the accused without proving the crime in court is a clear violation of rule of law and Article 21 of the constitution which says that through a process prescribed by law only a person can be deprived of his life. The concept of immediate justice allows police officers to use their power in a highly unauthorised way. Currently in India the UP police have become so popular for conducting encounters or in terms of public language UP police has become so popular in providing immediate justice. It will be not wrong to say that UP police have managed to get some success in imposing pressure on criminals, but this small success has generated various bigger problems as well, the uncontrollable number of encounters, arbitrary arrest and mistreatment with people kept in custody are such issues which have been highly ignored by media and intellectuals in last few years. The example UP police is one such example which shows that many efforts are used by them to control the crimes but on the other hand it also shows that cases of custodial crimes is increasing & turning towards a brutal crime day by day in UP.

Detailed analysis of the data related to custodial death in UP from 2020 to 2022

It is very shocking to know that 4484 people have died in custody in the last two years in India. Custodial crimes are making jails and police stations in India a hub of torture and it will not wrong to say that these places are turning towards death chambers for prisoners and arrested people. Not only for long term prisoners but people kept for temporary periods in prisons are also not spared from immense and arbitrary tortures, especially by the police. In July 2022 a report of the National Human Rights Commission, which was presented in Lok Sabha by the Central Ministry of Home Affairs, exposed the status of inhuman treatment of prisoners or people kept in custody by the Police. This report has various shocking numbers related to custodial crimes, especially the data related to death of prisoners in custody. This data showed that total 952 people have died in custody in Uttar Pradesh among total 4484 cases of custodial death in India from 1st April 2020 to 31st March 2022. It shows that in the last two years more than one fourth of total custodial deaths have happened in UP only.

A person kept in custody may be an accused, but he is not a criminal unless he is proven in the court as a criminal. Until a person is proven guilty that person must not be treated as a criminal. Keeping a person in custody does not mean that the person

kept in custody has lost all his rights. All possible and justified opportunities must be given to a person kept in judicial custody to get bail and prove his innocence. But in most cases the arrested people are not provided enough opportunities to utilize their rights instead they are tortured to make confessions, to give self-incriminatory statements, they are asked bribes to be freed and there are multiple illegal purposes due to which a person is subjected to custodial crimes. The problem is that the police want to finish the case by using shortcuts and torturing the arrested person to make him confess and describe the crime is one such brutal shortcut which is totally illegal because making a person by force to confess a crime is not allowed. Similarly, there are many processes which are illegal in nature but still they are used against a person in custody to commit custodial crimes. Preventing the use of such illegal means is quite necessary to stop custodial crimes not only in UP but all over India.

In 2001-02 there were total 1307 number cases of custodial deaths in India⁴ and within just twenty years the numbers have increased near about 3.5 times of what the numbers were there in 2001-02 and reached to the level of 4484 deaths. The custodial deaths happening in UP is a National level problem because the total number of custodial deaths in UP increases the aggregate number of custodial deaths in India. UP is a major contributor in increasing the total number custodial death in India at a very unbearable level. National data is formulated by adding the number of custodial deaths in all states and it is very shocking to know that the one fourth number of cases of custodial death are coming from UP only. It is very necessary that the cases are decreased in UP so that the numbers at national levels can decrease. Data collected by the Human Rights Commission was presented in Lok Sabha on 26th July 2022 related to custodial deaths which showed that the numbers of custodial death cases have increased rapidly during the time gap of 2020-21 to 2021-22. In 2020-21 there were total 1940 cases concerning custodial deaths while in 2021-22 the numbers increased by 604 more custodial deaths and reached to 2544 total custodial deaths. This data was calculated from 1st April 2020 to 31st March 2022 which showed that a total 4484 people have died in custody in the past 2 years. It was also found that the state of UP was a major contributor in increasing the custodial death cases from 2021-21 to 2021-22. As said above that the State of UP contributed at

⁴ National Human Rights Commission, Annual Report 2001-02, Annexure 7, pp. 360-61

least one fourth number of custodial death cases in total number of custodial death cases in India, the data shows that the total contribution of UP decreased a little bit from one fourth number of total cases in 2020-21 to one fifth number of total cases in year 2021-22, but still the contribution of UP was too high compared to other states. The number of custodial death cases in UP in 2020-21 was 451 while the total number of cases in India was 1940. This data shows that more than one fourth number of total cases of custodial death were reported in UP only in the year starting from 1 April 2020 to 31st March 2021. In the next year which started from 1st April 2021 and ended on 31st March 2022, it was found that the number custodial death cases increased to 501 with an increase of 50 more deaths from previous year. During this year 2021-22 there were a total 2544 cases of custodial deaths in India and the contribution of UP in this number was found to be more than one fifth of custodial deaths of total custodial deaths. If data collected in year 2020-21 to 2021-22 is interpreted to be showing the growth of custodial death cases, then it can be presumed that the custodial death cases will keep increasing in India and the State of UP will keep on contributing big numbers of cases of custodial deaths in total number of custodial death. In this way, unless big positive measures are taken, the numbers of custodial death cases will cross the mark of 3000 custodial death in year 2022-23 only and the contribution of UP in total custodial death may reach to the level of 600 to 800 custodial deaths.

Deaths in Judicial custody compared to Police custody

In judicial custody the arrested person is not allowed to be kept at the police station, but that person is sent to prison where the further interrogation with the arrested person can be done by the Police only after getting a special permission from prison authorities for that purpose. Judicial custody is found to be more dangerous and a hot spot for custodial crimes. Death of any arrested person can happen in judicial custody in a natural way like due to heart attack, due to some illness etc, in which nobody can be held liable but if the death has resulted due to an unnatural way then it is important to know the real person behind the death of that arrested person. In police custody the arrested person is kept under the control of Police. The police can seek custody of that person from the Magistrate but that custody cannot go beyond a maximum time period of 15 days, after this time period there can be judicial custody only, in this way

police can keep a person with him for not more than 15 days.⁵ In police custody also the death of an arrested person can happen in the form of a natural or unnatural way. But generally, it is the case of torture and violence which results in the death of a person in police custody.

According to the NHRC report 2,152 people died in judicial custody in India in the year 2021-22 while it was found that only 155 people died in police custody in India in the same year. It indicated that every day 6 people died in India among all people who were brought into judicial or police custody. It also indicated that everyday 5 people died in judicial custody while in every five days 2 people died in police custody. Though a person may die due to natural death without being subjected to any kind of torture by the police or jail officials but still the relatives of dead person must be given compensation in natural death. In natural death cases the State of UP provides no compensation while only the states of Tamil Nadu and Andhra Pradesh have made provisions for providing compensation in death due to natural reasons. Unnatural death of an arrested person can happen in many ways like through abetment of suicide, through accidental death, through medical negligence or it can happen due to a clear case of murder.

Nityanand Rai who is the Minister of State for Home Affairs in the Union Government presented this data related to custodial death on 26th July 2022 in Lok Sabha. This data was presented by him when he was replying to a question raised by Parliamentarian Abdussamad Samdani who belongs to Indian Union Muslim League. Just one day before the presentation of this data the Supreme Court had criticised the UP government for poor handling of undertrial prisoners. The Supreme Court on 25th July 2022 had warned the UP government to release all the 853 prisoners who were still in custody for a time of more than ten years, the SC warned to provide bail to all such prisoners if the UP government takes no decision on their release. The Supreme then asked for full details regarding such prisoners and it also asked the government to file a reply regarding this issue within two weeks. The UP government has not a good history for fair treatment with the people who are taken into custody. In November 2021, a person had died in custody who was named Altaf and belonged to Kasganj. Police was spreading this narrative the death happened due to suicide but according to family members of Altaf it was a case of custodial death in which

⁵ Section 167(1), The Code of Criminal Procedure, 1973

Kasganj police was alleged by them to have committed murder of Altaf. The prima facie evidence showed that the allegation of family members could be true and then 5 policemen were suspended. This has become a norm in custodial death cases that if any person who was taken into custody dies then the police start claiming it as a case of suicide but if the matter reaches the court, then the real truth gets unveiled which shows that the victim was actually murdered in custody and the narrative of suicide in that case gets failed. It shows that vigilant citizens, fair journalism and fair trial in court can expose the cases of custodial deaths and it can create a situation where police can be afraid of law when they mistreat any person who is brought in custody. The proper implementation of law which is made for taking any person in custody must be followed to prevent the cases of custodial crimes. There are many cases in which police detains any person and keep interrogating them for many days without taking remand from the court while it is a set rule that the arrested person must be brought within 24 hours before the Magistrate for taking his further custody. Many times, police do not keep any record of a person who was taken into custody, sometimes the arrested person is kept for a long time and the family members of the arrested person do not seek any help due to the fear of police. When any violence happens with the arrested person then the police deny having arrested that person and due to lack of any proper records it is very difficult to prove the guilt of the police. The police can very easily manipulate the evidence which can be used for incriminating them because the area of custody and documentary records all belong to them. In this way digitalization is one such method which can impose pressure on police to decrease the cases of custodial crimes. The digital records of arrested people and CCTV cameras are such tools which can be utilised but in a very advanced way. Apart from local Police stations or places where a person is detained, the digital records and CCTV footage must be collected in more than one sources which can help in finding the crucial evidence if those are deleted from one source. Constant medical check-ups of the arrested person is one such issue which can expose the cases of custodial crimes if the arrested person has been tortured. There must be facility to allow the arrested person to get medical check-up done from a place of his own choice because many times the medical check-up from the side of police is found to be favouring police only.

Justice MV Ramana, the 48th Chief Justice of India, has said last year in a programme that the cases of oppression, torture and death in police custody is still happening

when there is already existing a constitutional shield to prevent it. He said the expectancy of human rights violations increases in police stations itself due to the fear of custodial violence and tortures. He also said that in the current system no immediate legal aid is provided to a person who is taken into custody, the arrested person starts living in fear by thinking about future happenings.

The NHRC brought some guidelines in 1993 for informing to it the cases of custodial deaths.⁶ This information was asked to be sent by the state governments within 24 hours of happening of such death with a proper post-mortem report with videography of post-mortem, an inquest report and information related to magisterial enquiry. Supreme Court has already given detailed guidelines in a judgement, long time ago in 1996⁷, related processes after arrest of a person. A case of custodial death is an extremely heinous offence which is committed when there is rule of law already exist in our country. After the 1996 judgement of SC, it was made compulsory that the details of custodial deaths must be recorded and the other concerned people, like relatives, must be made aware about such death with details. Not only the compulsory rules were made but the guidelines were also framed to explain the behaviour of police for dealing with an arrested person. These guidelines and rules were made to be followed by all security agencies including CRPF, Revenue Departments, Railways etc. which have power to arrest people for interrogation. Human Rights Commissions of India & states and many other organisations have many times reminded the police to deal with the arrested people in a justified way. After all these positive efforts still the behaviour of UP police with arrested people is not getting corrected. In July 2022, a person of Amroha had died in police custody which had created a scene of public outrage and it was alleged by the relatives of that dead person that because of a small altercation with the police the victim was taken by the police to the police booth where he died after being brutally tortured by the police. It was a clear violation of all the laws and guidelines which are made for fair dealing with the arrested people. After all the outrage, seven policemen who belonged to RPF police booth under Amroha Police Station were suspended, not only they were suspended but a case of murder was also registered against them.

⁶<https://nhrc.nic.in/press-release/nhrc-issues-fresh-guidelines-regarding-intimation-custodial-death#:~:text=The%20Commission%20had%20issued%20general,Reports%20of%20the%20postmortem%20etc.>

⁷ SHRI D.K. BASU,ASHOK K. JOHRI Vs. STATE OF WEST BENGAL,STATE OF U.P.: date of Judgement 18/12/1996: WRIT PETITION (CRL) NO. 592 OF 1987

It has been said by a retired IPS officer, named Dr. V. N. Rai, who was also the DGP of the state of UP, that the justice system is not well connected with the people and this system has a lot of malice and shortcomings which is increasing the number of custodial deaths. Even when we have a lot of Constitutional principles and guidelines of the Supreme Court but still the justice system is not easily accessible with the normal people. Unlike rich people, the poor people do not have the power to access justice, which normally results in happening of the greatest number of cases of custodial crimes against poor, backward and marginalised people. It is said very well by Dr. V. N. Rai that the Police already knows how to treat in legal and justified manner with arrested people, that is why they do not commit such cases of torture against rich people who are taken into custody. It is generally assumed that police officers don't know the appropriate laws and guidelines for dealing with arrested people that is why custodial crimes do happen but actually Police officers know the laws and their limits and boundations related to keeping a person in custody that is why they do not commit any kind of illegal arrest or use any kind of torturous activities against rich people because they know that rich people can move to higher courts for complaining the unruly and illegal behaviour of police and then either the policemen can be suspended or they can be sent to jail for doing custodial crimes. Sadly, due to lack of knowledge and shortage of money this power of approaching higher courts is not used by those arrested people who are poor and less educated, this makes them vulnerable for custodial crimes and police can easily torture them by arresting them either in legal or illegal manner.

Conclusion

Currently there are 28 States and 8 Union territories in India but one fourth number of all custodial cases in India were noticed from 1 April 2020 to 31st March 2022 to be coming from UP only. The contribution of UP was one fifth of total custodial deaths from 1st April 2021 to 31st March 2022 compared to one fourth number of cases between 1st April 2020 to 31st March 2021. It shows that the contribution of UP in the total number of custodial deaths has decreased a little from 2020-21 to 2021-22 but still the state of Uttar Pradesh is a big contributor in the total number of custodial deaths. The shift from one fourth cases to one fifth cases is not because the situation is becoming good in UP for prevention of custodial deaths but actually it has shifted in such a way due to the increase in the number of custodial death cases in other states and in reality the situation is still too bad in UP. The Central Government can

say that it is the subject of every state to manage police and public order and Centre cannot be made responsible for increasing number of custodial deaths but it has to be kept in mind that the growth of custodial death cases increases the national aggregate as well and in this way the Central Government has to take cognizance of growing number of custodial death cases especially in the State of UP. A big police reforms at national level is required concerning the cases of custodial deaths. Currently the Central Government publishes only some advisory concerning the issues of Police atrocities and public order, but it is not enough. A measure solution will be to move the Subject of prison management from the control of states to the control of the Union Government, in this a uniform law can be applied at least for controlling the cases of custodial deaths in judicial custody. The States are not able to protect the human rights of arrested people, the Central government must take this issue very seriously.

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