

# POLICE CUSTODIAL DEATH: A GROWING ABUSE TO HUMAN RIGHTS IN INDIA

## I Introduction

HUMAN RIGHTS can generally be defined as those rights which are inherent in our nature without which we cannot live as human beings.<sup>1</sup>

India being one of the largest democracies in the world always paid high respect to human rights. Inclusion of the concept of these rights under the Constitution of India<sup>2</sup> and later on their recognition by the Indian Government through acceptance of the international covenant on Economic Social and Cultural Rights<sup>3</sup> shows its commitment at the national and international level in respect of human rights.

The Indian Government has always played a leading role in raising the issue of human rights whenever they were abused in any part of the world, whether in Palestine, South Africa or elsewhere.

But in recent years, a neighbouring country has started a movement at different international fora to harm the image of India in respect of human rights. No doubt such allegations regarding abuse to human rights have mostly been found baseless, while being investigated by the Press Council of India.<sup>4</sup> But if looked at impartially, the fact of such abuse in the country cannot altogether be denied.<sup>5</sup> Cases of innocent killing can be witnessed in any part of the country. Although the number of killings by extremists has substantially decreased in recent years, the problem of death resulting in police custody<sup>6</sup> or caused due to

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1. U.N., *Human Rights—Questions and Answers* 4 (1987).

2. Part III. This deals with fundamental rights such as (i) right to equality (art. 14-18); (ii) right to freedom (art. 19-24), right against exploitation (art. 23, 24), freedom of religion (art. 25-28), right to culture and education (art. 29, 30), right to constitutional remedies (art. 32).

3. Adopted by the General Assembly in 1966. Indian Govt. ratified the covenant in the year 1978.

4. 'Anti India Propoganda War', *The Hindustan Times* 27 April 1992 (New Delhi).

5. Amnesty International while welcoming the concern of the Indian Prime Minister on the growing number of complaints of human rights violation, asked India in its report to take swift action in cases of custodial death and to ensure compensation to the relation of the deceased. See, *id.*, 13 July 1993.

6. A study relating to custodial death has shown an upward trend. It indicates 149 deaths in police custody in 1991 as against 112 in 1990, Maharashtra had to account for the maximum number of 23, Andhra Pradesh had 5. In U.P. 10 people died in police custody. Kerala and Rajasthan had 11 deaths each while Delhi had 6. See, 'Crime in Custody', *id.*, 26 June 1992. Also see, 'Tea Vendor Tortured to Death', *id.*, 19 Feb. 1994. One Amarjeet Singh (30) was picked up by the police and tortured. Next day police took him to the hospital in a critical condition and got him admitted as an unknown roadside victim. Also see, 'S.H.O. Held', *id.*, 26 Feb. 1994. S.H.O., Gosainganj Police Station (Sultanpur U.P.) was suspended following the death of a student in police custody.

false encounters<sup>7</sup> shown by the police is still increasing which, sometimes, shakes the confidence of the people in the democratic system of the country besides creating the problem of abuse to human rights.

## II Administrative and judicial action in police custodial death

Since all are equal in the eye of law, everyone is liable to punishment without any distinction of rank, caste and creed.<sup>8</sup> Similarly policemen are also responsible for any offence, committed during the course of duty. Consequently administrative and judicial actions are taken against police in cases of custodial death and if found guilty, they are punished like ordinary persons.

Section 176 (i),<sup>9</sup> Criminal Procedure Code 1973 (Cr P C) specifically creates liability of the magistrate to enquire *into* cases of police custodial death in order to find out the cause of death so that any guilty persons can be punished. Recently an enquiry was set up in a case of custodial death and the team of Gokulpuri Police Station (Delhi) was suspended on its findings. The accused had been nabbed from Purkazi, Muzaffarnagar (U.P.) in connection with an abduction case. He expired due to torture in police custody and his body was thrown by the police into the Hindon river.<sup>10</sup>

In another case, a 22 year old young man, expired in police custody at Patel Nagar Police Station in Delhi. An enquiry was ordered to investigate the case and two constables of the station were suspended. The accused was picked up by the police from his house on suspicion of an involvement in theft.<sup>11</sup>

Similarly the Supreme Court also takes a strict view as regards cases of police custodial death. In the recent case of *Dalip Singh v. State of Haryana*,<sup>12</sup> it held two constables alongwith the Sub-Inspector of Kurukshetra District (Haryana), guilty of causing death of the accused by beating and convicted them under section 304(II)<sup>13</sup> of the Indian Penal Code 1860. Further, in another case of custodial death, the court not only directed the Home Secretary of Punjab to suspend the guilty sub-inspector for causing it but also ordered the CBI to conduct an enquiry. One innocent person, Sabarjeet, was picked up by the police, detained for several

7. One Jagtar Singh (25), who was not involved in any way with the terrorists, was picked up by the police of Taran Taran (Punjab) from his house, kept in custody for 10 days and ultimately gunned down in an encounter without making any enquiry about his antecedents. Later on he was declared the Lt. General of Khalistan Liberation Force. See "Fake Encounters Back", *The Hindustan Times* 23 Nov. 1993. Also see, "Killing for the sake of Promotion", *id.*, 3 Jan. 1994. Police District Chief of Amritsar (Punjab) admitted that constable Bhupender Singh killed the innocent man and fabricated the story to lend plausibility to his heinous act for seeking quick promotion. The guilty policeman was suspended.

8. See, art. 14, Constitution of India, dealing with equality before the law. Also see, s.2, Indian Penal Code 1860, dealing with application of the Code.

9. Substituted by Act no. 46 of 1983, dealing with duty of the magistrate to enquire into cause of police custodial death. Also see, s. 7, Police Act 1861, dealing with power of the Inspector General (I.G.), Deputy Inspector General (D.I.G.), Additional Deputy General (A.D.G.), and District Superintendent to suspend subordinate policemen guilty of any offence.

10. "Eight Cops Suspended for Custodial Death", *The Hindustan Times* 1 Dec., 1993 (New Delhi).

11. "Two Cops Suspended for Custodial Death", *id.*, 20 June 1993.

12. A.I.R. 1993 S.C. 2302.

13. Dealing with the punishment of causing death by negligence.

days and finally gunned down near the the Indo-Pak Border. Later on it was found that the deceased had nothing to do with terrorist activities.<sup>14</sup>

It shows that policemen found guilty of custodial death are frequently punished by administrative and judicial actions. This, however, serves only one aspect of the justice that the criminal should not go unpunished while the other aspect about relief to the deceased's family is not usually taken into consideration by such actions. Consequently one has to move separately for seeking relief by way of compensation in cases of custodial death either to the civil court, High Court or Supreme Court respectively.

### III Relief in police custodial death

Since police custodial death deprives the deceased of his fundamental right to life guaranteed under article 21<sup>15</sup> of the Indian Constitution, compensation has been considered an appropriate relief in such cases. This opinion has been expressed by the Supreme Court in *Nilabati Behra v. State of Orissa*.<sup>16</sup> In this case the letter of one Nilabati Behra was treated by the court as writ petition under article 32<sup>17</sup> of the Constitution, wherein she had claimed compensation for death of her son Suman Behra (22) in police custody in District Sundergarh (Orissa). The court, while awarding Rs. 1,50,000 as compensation to the deceased's mother, made it clear that there can be no question of availability of the defence of sovereign immunity in case of constitutional remedy. It further said that the court has very wide powers under article 32 of the Constitution which enables it to award compensation in appropriate cases where this is the only mode of redress available for contravention of fundamental rights.

The opinion of the Supreme Court derives its support from its earlier decision in *Kasturi Lal v. State of U.P.*<sup>18</sup> The court held that the state's plea of sovereign immunity for its servant had no application in the constitutional scheme and it is no defence to constitutional remedies under articles 32<sup>19</sup> and 226<sup>20</sup> of the Constitution. In fact it enables the award of compensation for contravention of fundamental rights when it is the only mode of their enforcement. Further in *Rahul Shah v. State of Punjab*,<sup>21</sup> the court said that in exercise of its jurisdiction under article 32, it can pass an order for payment of money in the nature of compensation consequential upon deprivation of fundamental right to life and liberty of the petitioner.

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14. "Supreme Court Directive on Custodial Death", *The Hindustan Times* 6 Nov. 1993 (New Delhi).

15. Deals with protection of life and personal liberty.

16. A.I.R. 1993 S.C. 1960. Also see, *Ravi Kant's case*, (1991) 2 S.C.C. 373. Order of the Madras High Court, as regards compensation of Rs. 10,000 made in a writ petition filed under article 226 for violation of fundamental rights, was upheld by the Supreme Court.

17. Deals with power of the Supreme Court relating to issue of directions for enforcement of fundamental rights conferred under Part III of the Indian Constitution.

18. A.I.R. 1965 S.C. 1039.

19. See, *supra* note 17.

20. Dealing with the power of the High Court to issue directions for enforcement of fundamental rights.

21. A.I.R. 1983 S.C. 1086.

In the recent case of *SAHELI v. Commissioner of Police*,<sup>22</sup> the Supreme Court made it quite clear that the state is liable for the tortious acts committed by its agency. It was a writ petition filed under article 32 of the Constitution by the Women Civil Rights Organisation known as (SAHELI) on behalf of the deceased's mother for recovery of compensation consequent to the death of her child (9), caused in custody of Anand Prabhat Police Station (Delhi). The court, while holding the state liable for such tortious act of its agency, awarded compensation of Rs. 75,000 to the mother.

It shows that compensation is an adequate relief in cases of police custodial death. It can be claimed by a relation of the deceased by moving a writ petition under article 32 or 226 of the Constitution, besides the civil remedy under the law of torts. The state is not allowed to escape from its liability to pay compensation in such cases on the plea of sovereign immunity.

#### IV Conclusion

No doubt, stern actions are taken against persons found guilty in police custodial deaths besides holding the state liable in such cases. But still these cases are increasing.<sup>23</sup> The reason behind it is the unlimited powers police enjoy under the existing legal system of the country. Being custodians of law, they are themselves in possession of police records. Hence it is very difficult to establish their guilt in cases of police custodial deaths. Consequently they easily escape from criminal liability in such cases.

Recent establishment of the Human Rights Commission<sup>24</sup> is quite encouraging and may yield fruitful results regarding human rights in the country. It has been empowered to enquire into any complaint of violation of human rights and make recommendations to the government against the guilty person. But it is still doubtful that the commission would successfully prevent the police from misusing their powers which ultimately become the cause of custodial death unless the same are curtailed through some specific amendments. For this purpose some important changes under the following enactments are suggested:

##### (i) *Code of Criminal Procedure 1973*<sup>25</sup>

The unlimited powers of the police existing under Cr. PC which some times become the cause of police custodial death, should be curtailed in the following ways:

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22. (1990) 1 S.C.C. 422.

23. See, *supra* notes 6, 7.

24. *Lok Sabha* passed the Protection of Human Rights Bill 1993 (which replaced the ordinance promulgated in Sept. 1993) since the commission started functioning. See, *The Hindustan Times*, 18 Dec. 1994. Also see, *id.*, 12 Dec. 1993—commission issued direction to district magistrates and superintendent of police to report on custodial death and rape within 24 hours of their occurrence, failing which it would be treated as an attempt to suppress the case.

25. Act no. 2 of 1974.

- (a) That power of the police regarding arrest without warrant in the case of a cognisable offence<sup>26</sup> merely on ground of suspicion should be restricted. Permission of the magistrate before making such arrest should be made necessary. In case an immediate arrest is necessary to avoid the accused's absconding, it should be made in the presence of at least two reputed persons of the locality. For this purpose section 41<sup>27</sup> of Cr PC should accordingly be amended.
- (b) Similarly the person, who has not been named in the F.I.R. in connection with the commission of cognisable offence but subsequently disclosed by some prosecution witness, in his statement under section 161<sup>28</sup> of the Code, should no longer be arrested without the warrant. The aforesaid section 41 of the Code should also include such provision.
- (c) That at the time of arrest, the accused should necessarily be examined medically at the instance of the police. Failure of the accused to make the request for such medical examination under section 54<sup>29</sup> of the Code, should not exonerate the police from such liability. In this context the said provision of section 54 should accordingly be amended.
- (d) That in the case of arrest of any person, police should also inform his relation and the chief judicial magistrate about the grounds of arrest other than the person so arrested. Failing which the magistrate should specifically be authorised to ask the police to produce the person so arrested and let him free if he finds the detention to be illegal. The magistrate should legally be bound to get the arrested person examined medically as soon as he is produced before him. In this context, section 50<sup>30</sup> of the Code should accordingly be amended.
- (e) That due to the advancement of the means of transport and telecommunication all over the country, the period of 24 hours under section 57<sup>31</sup> of the Code, for which police can detain any arrested person, should substantially be reduced. For this purpose the aforesaid section should accordingly be amended.
- (f) That some specific provision to ensure compensation for the deceased's family in cases of police custodial death without any bar to civil remedy, should be made under the Code.

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26. *Id.*, s. 2 (c) deals with definition of cognisable offence wherein the police can arrest the person without warrant. For details, also see, *id.*, Schedule I.

27. *Id.*, dealing with power of police to arrest the person without permission of magistrate merely on ground of suspicion of having some connection with commission of cognisable offence.

28. *Id.*, dealing with examination of witnesses by police during investigation.

29. *Id.*, dealing with examination of accused by medical practitioner at the request of police officer.

30. *Id.*, dealing with duty of police to communicate to the arrested person the grounds of his arrest.

31. *Id.*, dealing with duty of police to produce the arrested and detained person in custody before the magistrate within a period of 24 hours.

(ii) *Indian Evidence Act 1872*<sup>32</sup>

In order to establish liability of the police in cases of custodial death, the presumption of guilt should be raised against them. Thus, if any death takes place in police custody, the burden of proof should lie on them to disprove that the same was not caused in their custody. For this purpose some specific provision should be inserted under chapter VII<sup>33</sup> of the Act.

(iii) *Police Act 1861*<sup>34</sup>

The duty of the police in respect of human rights should specifically be created besides providing them the teachings about such rights during their training period. For this purpose provision should be made under section 23<sup>35</sup> of the Act.

If these suggestions are included within the aforesaid enactments, it would not only provide an effective control on the growing problem of police custodial death but also develop the confidence of people in the democratic system of the country besides improving the image of India in respect of human rights at the international level.

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32. Act no. 1 of 1872.

33. *Id.*, dealing with burden of proof.

34. Act no. V of 1861 amended by Act no. LXIV of 1949.

35. *Id.*, dealing with duties of police officer

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