

ORIGINAL RESEARCH PAPER

Custodial deaths: a retrospective study in Mumbai region

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ABSTRACT

Introduction: The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. Preventing torture in custody and ensuring strict compliance of its guidelines in custodial deaths is one of the important agendas on the NHRC's list. Sudden and unexpected death in custody is commonly associated with allegations of torture against law enforcement agencies. **Aims:** This study is done to find out the commonest cause of death in custodial death in Mumbai region and its relation to age, sex, manner of death, hospital stay and time interval between death and post-mortem. **Materials and methods:** This study was carried out retrospectively at Sir JJ Hospital in Mumbai region. 95%, males and 5% females who were died in custody were studied retrospectively for one year and data was analysed using SPSS. **Results:** in this study 95% were males and 5% were females. A most common cause of death is Pulmonary Tuberculosis (42%), followed by hanging seen in 11.6% cases. The natural cause was in 79% case and un-natural in 21% cases. **Conclusion:** The majority of deaths in custody are due to natural causes, improper medical facilities could be an important aggravating factor. Providing healthcare facilities, equivalent to that available in the community is one of the most important remedial measures.

Keywords: Human Rights; jail; prisoners.

INTRODUCTION

The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during

custody. Legally custody is defined as, any point in time when a person's freedom of movement has been denied by law enforcement agencies, such as during transport prior to registering a case, or during the arrest, prosecution, sentencing, and correctional confinement. Death in custody is defined as death occurring in some form of custodial detention, such as police cell or prison. Preventing torture in custody and ensuring strict compliance of its guidelines in custodial deaths is one of the important agendas on the NHRC's list. Sudden and unexpected death in custody is commonly associated with allegations of torture against law enforcement agencies.

No civilized law postulates custodial cruelty - an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or collective wrath of hypocritical thinking. It is one of the worst crimes in the civilized

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society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens and is an affront to human dignity.

Prisoners have human rights and prison torture is the confession of the failure to do justice to living man. For a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. Simply stated, the death of a person in custody whether of the Police or Judicial will amount to Custodial Death.

The Royal Commission of Australia into aboriginal deaths recommended that the definition of a death in custody for the purpose of post-death investigation and for the national monitoring of custodial deaths.

The motto of the National Human Rights Commission is "Sarve Bhavantu Sukhinah." Happiness and health for all are sought to be achieved through a rights-based regime where respect for human beings and their dignity is cardinal. President's assent to the Protection of Human Rights Act was a major breakthrough in this direction. Section 3 of the Act provides for the setting up of the National Human Rights Commission (NHRC) and Section 21 provides for the setting up of various States Commissions (SHRC).

As per the NHRC guidelines, all custodial deaths are to be reported within 24 hrs and a post-mortem examination is to be conducted by a panel of doctors & videography has been made mandatory. NHRC Report from 2001-02 to 2006-7 showed an increase in custodial deaths all over India .

Aims: This study is done to find out a) the most common cause of death in custodial death in relation to age and sex, manner of deaths b) hospital stays in natural cases of deaths c) time interval between custodial death and starting of inquest panchanama d) most common cause of death in police custody and in Magistrate custody e) most common addiction in these custodial deaths.

MATERIALS AND METHODS

This is a retrospective analysis of 43 cases of custodial deaths that have occurred in the last one year during their treatment in Sir JJ Hospital or who had previously received treatment either in the respective jail hospitals or peripheral health centres and brought dead cases. The post-mortem examination of these cases was conducted in the mortuary of the institute as per the guidelines laid out by the National Human Rights Commission. Relevant information was gathered from post-mortem reports and medical record files. Causes of death were categorized under natural (disease process) and unnatural (suicides/accidents/homicides). Factors such as sex, age, place of occurrence, treatment protocols, past medical history, allegations of foul play/negligence, etc were considered while analysing the sequence of the events leading to death in these cases.

RESULTS

Total of 43 cases was studied in this one-year retrospective study. This Study showed male preponderance with 95.3% males and 4.7% females. In police custody total 18.6% deaths were recorded and in magistrate custody, 81.4% of deaths were recorded. In this study out of 43 cases 95.3 % male was noted and 4.7 % female noted.

In this study out of 43 cases 23.3 % cases were between the age group of 20-30;30.2 % cases were between the age group of 30-40;18.6 % cases were between 40-50 age group,18.6% cases were between 50-60 age group and 9.3 % cases were 60-70 age group.

In this study out of 43 cases 18.6 % cases were police custody cases and 81.4 % cases were magistrate custody cases (**Table 1**).

Table 1 Custody type

	Frequency	Per cent
pc	8	18.6
mc	35	81.4
Total	43	100.0

In this study out of 43 cases, 65.1 cases were hospital stay and remaining 34.9 % cases were brought dead to the hospital (**Table 2**).

Table 2 Hospital stay

	Frequency	Per cent
Yes	28	65.1
No	15	34.9
Total	43	100.0

In this study out of 43 cases from time of death till starting of post-mortem gap in hours and day were noted by up to 12 hours 9.3 % cases; up to 24 hrs 37.2 % cases; up to 36hours 32.6 % cases; up to 48 hours 9.3 % cases; up to 60 hours 4.7 % cases; up to 84 hours 2.3 % cases; up to 9 days 2.3 % cases; up to 15 days 2.3 % cases (**Table 3**). This delay was due to incomplete papers provided by police, delay in panchanama of magistrate etc. in the majority of cases, a post-mortem was done within 24-36 hrs.

Table 3 The gap in hours & day

	Frequency	Percent
12 hrs	4	9.3
24 hrs	16	37.2
36 hrs	14	32.6
48 hrs	4	9.3
60 hrs	2	4.7
84 hrs	1	2.3
9 days	1	2.3
15 days	1	2.3
Total	43	100.0

In this study out of 43 cases 79.1 % cases were noted the natural cause of death and 20.9 % were the unnatural cause of death (**Table 4**).

Table 4 Manner of death

		Frequency	Percent
Valid	natural	34	79.1
	unnatural	9	20.9
	Total	43	100.0

In this study out of 43 cases, the most common natural cause of death was tuberculosis in non-addicted person i.e. 41.9 % and it is found commonly in 30-40 age group. It is commonly seen in males and in magistrate custody (**Table 5**). In this study out of 43 cases most common unnatural cause of death was hanging in non-addicted person i.e. 11.6 % and it is most commonly found in 20-30 age group. It is commonly seen in males and in police custody. (Table 5 cause of death)

Table 5 Cause of death

	Frequency	Percent
TB	18	41.9
Hanging	5	11.6
Cancer Squamous	1	2.3

DISCUSSION

Premature death of persons in custody is always tragic. The legal authorities are bound by the law to provide adequate necessary amenities to ensure the health and safety of persons in their custody, including timely medical assistance, and treating the inmates in a humane manner. Majority of the cases studied died due to natural causes, which is in accordance with the global scenario.¹⁻⁷ In this study we have retrospectively analysed all cases of custodial deaths which came to the Department of Forensic Medicine for post-mortem examination during the period 2017 to 2018. The study showed male preponderance with 41 male cases (95.3%). This finding was consistent with other studies conducted previously.⁸⁻¹³

Among the natural deaths, most of the deaths were due to respiratory system involvement with pulmonary tuberculosis being commonest. This finding was supported by various researchers.^{8,14} However Wobeser et al and Frueshwald et al found that the majority of deaths were due to Cardio-vascular diseases.^{15,16} From the above observation, it was clear that prisoners constitute a high-risk group for the acquisition of tubercular infections. This is attributed to overcrowding, closed living conditions, insufficient ventilation, poor living conditions and poor nutrition.

The present study is in line with that of Bansal et al who found that suicide is the most common unnatural manner of death, however, they found, fall from height as the cause in most of the suicidal cases as compared to hanging in the

present study.¹⁴ Hanging was also found to be a most common method of suicide in custody by Agnihotri et al.¹⁷ All these cases be it natural deaths or unnatural deaths show some sort of carelessness and disrespect for human life on the part of authorities.

It was observed that proper records pertaining to their medical illnesses, medical treatment, history of any addiction, etc were not available. Many cases had a history of opium and alcohol addiction. Some may have contracted illness during confinement while many cases had pre-existing illnesses. In a few of the cases, allegations of negligence were made against jail authorities, including non-deliverance of timely medical assistance.

The Article 21, which is one of the luminary provisions in the Constitution of India, also lays emphasis on the fact that no person shall be deprived of his life and personal liberty except according to the procedure established by law. Even the convicts, under-trials, detainees, and other prisoners in custody cannot be denied this precious right.

Our study was limited by the lack of standard data available in the records, it was found that though inquest proceedings in all custodial deaths were supposed to be conducted under 176 CrPC, the investigating officer was heavily dependent on jail authorities for the relevant information.

CONCLUSION

When the state takes away a person's liberty, it assumes full responsibility for protecting their human rights. The most fundamental of these is the right to life. Each year, however, many people die in custody. Though the majority of these deaths are due to natural causes, improper medical facilities could be an important aggravating factor. Providing healthcare facilities, equivalent to that available in the community is one of the most important remedial measures. The provision of adequate treatment for HIV, communicable diseases, drug and alcohol addiction in detention is essential in order to protect the rights to life. Proper awareness among jail authorities and prisoners in such cases can prevent further spread of infection among the inmates.

Developing good practice standards on training; reviewing recommendations from NHRC, and monitoring progress in their implementation are some of the steps in a positive direction. Systemic measures to improve prison conditions, collecting and sharing information on deaths in custody; and commissioning research and implementation of the recommendations by the Government, should be undertaken. The views of the Commission for better maintenance and running of prisons, better trained and more dedicated staff, including medical staff, and de-crowding of prisons are few of the important suggestions to be followed.

Factors such as timely medical diagnosis and treatment, facilities for quarantine in communicable diseases are few of the important issues relating to the healthcare of the

individuals in custody. Strictly following guidelines & slight modification in the already laid down procedures, as well as compliance among jail authorities, will go a long way reducing the morbidity and mortality among prisoners.

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