

Ignoring Custodial Deaths in India

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There is justifiable anguish over the killing of Sarabjit Singh in a Pakistani jail but what about the thousands of deaths in police and judicial custody in India? Torture is common and rampant in police custody and deaths in so-called police encounters are routinely reported. Politicians and the media are demanding justice for Sarabjit. When will the Indian government hold the police and jail officials responsible for custodial deaths accountable and compensate the next of kin?

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." (Article 14 of the Constitution of India)

Sarabjit Singh, an Indian prisoner on death row in the Kot Lakhpat jail in Pakistan died on 2 May, 2013, after being assaulted in custody making it a custodial death. Sarabjit has been proclaimed a martyr in India, his body was cremated with full state honours, a three-day state mourning was announced and the Punjab government as well as the government of India announced compensation amounts (Rs 1 crore and 25 lakhs respectively) to the next of kin. Political leaders demanded that those responsible for the barbaric and murderous attack be brought to justice. All this is commendable, of course. One only wishes that the Indian government would act just as swiftly in every case of custodial death in our country.

According to the report of the Asian Centre for Human Rights (ACHR), "Torture in India 2011", the National Human Rights Commission (NHRC) recorded a total of 14,231 deaths in custody in India between 2001 and 2010, which includes about 1,504 deaths in police custody and about 12,727 deaths in judicial custody. The ACHR report observes that these are only the cases reported to the NHRC, and do not include all cases of custodial deaths. The report attributes the deaths in custody to torture, denial of medical facilities and inhuman prison conditions. Once a person is taken into custody, the responsibility for his/her life, health and safety rests with the authorities in whose custody he or she is, be it

the police or the jail authorities.

However, so far, the government has hardly ever immediately accepted responsibility for the deaths in custody, nor has it announced compensation in such cases particularly of such large amounts as promised to Sarabjit's kin, or taken measures to speedily prosecute the officials responsible for the deaths. Yet the very same politicians are demanding on Sarabjit's behalf what they do not willingly give to their own citizens. Nor has the government or the opposition ever expressed any kind of outrage for the deaths of the 14,231 people in custody in India between 2001 and 2010. The media, especially television channels, termed the custodial death of Sarabjit an act of butchery, referring to his assailants as "Pak butchers", but do not show the same passion for justice when it comes to Indian custodial deaths.

Roll Call of Dishonour

What about the police officials in whose custody arrestees die in India? What about the people regularly killed in "encounters" with the police or the army? What about Sohrabuddin, Kausarbi and Ishrat Jehan? When will those responsible for their deaths be held accountable and punished for these reprehensible acts? When will their families be compensated for their losses? Their families are regularly denied basic documents relating to their deaths, such as the post-mortem report. Most of these cases are deemed suicides. In the case of encounters, it is alleged that the deceased shot at the police/army officials involved, who somehow miraculously escape unscathed. The accused in custodial death and encounter cases are rarely prosecuted, and cases of murder are almost never registered against them. The government seldom grants sanction to prosecute the officials involved. Sarabjit is supposed to have been assaulted by fellow prisoners. What makes the cases mentioned above far worse is that they are perpetrated by the police and the army, whose responsibility it is to protect the citizens of this country from crime.

Take the case of Khwaja Yunus. The young software engineer was arrested in December 2002 by the Mumbai Crime Branch in what is commonly known as the Ghatkopar bomb blast case. He was tortured and killed in police custody, and his body was never found. Instead the police indulged in an elaborate cover-up and attempted to show that Khwaja Yunus had escaped from their custody. It was only after his father filed a petition in the Bombay High Court that the government ultimately admitted that he had died in custody and paid his family Rs three lakhs as compensation. However, though the Maharashtra State CID (Crime Investigation Department) chargesheeted 14 police officials, the government sanctioned the prosecution of only four of them. The High Court in 2011 directed the state to pay Yunus's family Rs 20 lakhs as compensation, but did not direct the prosecution of the remaining 10 accused who had been chargesheeted. This amount was paid to his mother almost 10 years after his death. The offenders are yet to be tried and punished. Ram Singh, the bus driver, and one of the accused in the recent Delhi 16 December, 2012, gangrape case died in Tihar jail in mysterious circumstances on 11 March.

Some of the media reports indicated that Ram Singh was assaulted in the jail and succumbed to the injuries. No action has been taken so far against any officials or inmates for his death. Sanaullah Ranjay, a Pakistani national was assaulted with a brick by a fellow inmate in the Kot Bhalwal jail in Jammu & Kashmir on 3 May. He sustained severe head injuries, and is presently on the ventilator in the Post-Graduate Institute of Medical Education and Research (PGIMER), Chandigarh. What did the authorities do to protect him? What is the government doing to protect people in custody? What are the preventive measures taken? Are there medical facilities and staff in every jail in the country to provide services in emergency situations?

Sarabjit was convicted in October 1991 of espionage and for carrying out a series of bomb blasts in Lahore and Faisalabad in 1990 that killed 14 persons, and was sentenced to death. A man who in India would be termed a "terrorist" along the lines of Ajmal Kasab the Pakistani national who was convicted in the terror attack which occurred in Mumbai on 26 November, 2008, and was executed on 21 November, 2012, or Afzal Guru the Kashmiri who was convicted in the Parliament attack case and was executed on 9 February, 2013. Both Kasab and Guru were executed in secrecy, and not permitted to meet their families prior to execution. Their bodies were not returned to their families for the last rites/funeral. However, elaborate measures were taken by the government of India to ensure the speedy and safe return of Sarabjit's remains. He was given a funeral with state honours! Why the discrimination? Why the double standards?

Torture in Police Custody

India signed the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in 1997 but is yet to ratify it. A toothless Prevention of Torture Bill is pending before the Parliament, and there is very little hope that it will be passed within the tenure of this government. While there are jail manuals in many states, (besides the model jail manual) which state how prisoners are to be treated and what they are entitled to in prisons, there are absolutely no rules regarding the treatment of inmates in police custody and they remain totally at the mercy of the police. Torture in various forms is rampant in police custody with the degree differing according to the crime for which the person has been arrested, his/her economic condition and social status and whether he/she has legal representation. Scientific and non-violent methods of interrogation are alien to our law enforcement agencies. The most common form of torture is depriving a person of sleep for days together. Assault is equally common, so is the threat to rape and torture the female relatives of the arrestees and use of torture to extract confessions is routine. Recent laws have made such confessions to the police admissible, making the job of the police easier. Some Supreme Court and High Court judgements, most importantly the D K Basu guidelines on arrest laid down by the Supreme Court in 1997, and now incorporated by recent amendments in the Code of Criminal Procedure (CrPC), have created a few safeguards. However, there is need for vigilant judges to ensure the strict implementation of these guidelines and provisions. It is important to note here that the Right to Life is a fundamental

right in this country, guaranteed to both foreigners and Indians alike by the Constitution of India. The Supreme Court of India held in 1974 in the case of D Bhuvan Mohan Patnaik vs State of Andhra Pradesh that prisoners are not denuded of their fundamental rights including their right to life, by mere reason of their incarceration.

Make Equal Justice a Reality

While discussing the plight of Indian prisoners in foreign jails and campaigning for better conditions is important, there is urgent need to look at the conditions of prisoners in our own jails. While the assault on Sarabjit Singh in the Kot Lakhpat jail that ultimately resulted in his death deserves to be condemned strongly and acted upon, the same must be done in every case of custodial death and extra-judicial killing in India. Our Constitution guarantees equality and equal justice to all. That guarantee must not remain only on paper. It must become a reality.