

ORIGINAL RESEARCH**Two year retrospective study of Custodial deaths of Prisoners subjected to Autopsy at Tertiary care level Mortuary in south west region of Punjab: Retrospective Autopsy Study**

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Abstract

Prisoners also have all the basic rights which a free man has but under some restrictions and these can't be taken away from them. Access to health services without discrimination is one among the basic rights like right to food and water, right to have an attorney to defend himself, protection from torture, violence and racial harassment. Just being in prison doesn't deprive them from their fundamental rights especially when A person in custody is entirely dependent on his custodians for his basic requirements. This retrospective study done on custodial deaths subjected to Postmortem examination under Judicial Inquest from 01/01/2020 to 31/12/2021 observed that maximum prisoners were male (95%) of age group 25 to 35 years (36%); rural domicile (75%). Maximum cases of custodial deaths reported in the month of May June (30%). Most of the prisoners (90%) died while under treatment at tertiary care level and 60% died within 24 hours of referral to higher center for treatment with different alleged causes of natural death.

Keywords: Custodial death, Autopsy, Magisterial Inquest, Health care Services, Rights of Prisoners.

Introduction

Article 21 of Indian constitution grants every citizen of India **right to live** and to live with dignity. The Honorable Supreme Court also observed that an accused or convict of any crime cannot be deprived to enjoy the fundamental rights guaranteed to him under Article 14 and 21 of The Constitution of India as our country is signatory to the UNO Convention of Human Rights Declaration Act, 1948. Hence, this also extends to the **Prisoners in custody** and cannot be taken away except by procedure of law¹.

A person is said to be in **Custody** from the moment he or she is apprehended, arrested, imprisoned, detained, not permitted to leave at will or otherwise deprived of his liberty by agents of state or by any other public or private organization including correctional and Medical institutions operating within the jurisdiction of that state². Unfortunately, the term Custody has not been defined in Criminal procedure Code of India (CrPC).

As the Prisoners have the same **right to health** care as everyone else, hence the Jail authorities have a responsibility to ensure that each and every prisoner receives appropriate and timely health care services. Health care staff posted in Jail Hospitals, must have the same professional independence as their professional colleagues working in the Civil Hospitals. Several international standards define the quality of health care that should be provided to prisoners. A provision in **Article 12** of the International Covenant on Economic, Social and Cultural Rights establishes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (1) **Prisoners should not leave prison in a worse condition than when they entered.** This principle is reinforced by Recommendation No. R (98) 7 of the Committee of Ministers of the Council of Europe³.

The health of prisoners was particularly at risk **during the COVID-19 pandemic** due to chronic overcrowding, and inadequate sanitation and medical care in detention facilities. As per Amnesty International in its report of 2020-21⁴, the authorities reported that in May, out of 713 prisoners tested at Conakry Central Prison, 68 had positive results for COVID-19. The Ministry of Justice said they were treated in health facilities deployed in the prison. Conakry Central Prison was the most overcrowded facility in the country, holding 1,500 detainees, but with a capacity for only 300.

Death in custody is considered to be the cruelest form of human rights violation. Most of the time such deaths are due to natural causes but unnatural and violent causes are also not rare entity^{5,6}. Further sudden withdrawals in case of prisoners with history of chronic Drug abuse, insensitivity of Prison Authorities resulting in untimely attention and addressal of medical issues of Prisoners, inadequate trained staff and facilities at Primary Healthcare setups inside jails and shortage of Medical supplies at secondary and tertiary care level Government Hospitals, inadequacy or delay in release of Funds for treatment during critical conditions by the Jail authorities are some of the acclaimed reasons by the researchers, contributing untimely natural as well as unnatural deaths in custody. It is forbidden by the United Nations, the Constitution of India, the National Human Rights Commission and guidelines have been set by the Supreme Court of India regarding general conduct of staff with prisoners, food and nutrition, living conditions of the prisoners, separate cells for males and females to avoid sexual harassment and sexual offences⁷. Its duty of the States to take proper measures so as to ensure that right to life extends to prisoners and to prevent arbitrary deaths in custody.

According to the Asian Centre of Human Rights, **in India**, there are at least 4 custodial deaths per day from 2002-2007. In India, all such custodial death cases need to be investigated under section 176 CrPC warranting Magisterial Inquest (may be conducted by Judicial or Executive Magistrate depending upon severity of the circumstances, Unnatural or natural suspected cause of death) and are supposed to be reported to the State and National Human Rights Commission. Jail Authorities are bound to inform the Magistrate on duty to initiate Inquest proceedings as soon as any custodial death of prisoner comes into notice. Subsequently Magistrate being enquiry officer after completion of Inquest Papers, statements of concerned etc. moves an application to Civil Surgeon/ C.M.O/ Head of Forensic Medicine Department so as to constitute a Medical Board as per National Guidelines and get the Postmortem examination done in his presence under Videography.

Determining cause, mode and manner of death in such cases is of paramount importance so as to rule out any foul play and to satisfaction of attendants of the deceased prisoner if the death was natural, was it avoidable, whether the due treatment could be offered at appropriate time and if its unnatural to book the offenders whoever is the perpetuator. Sealed Postmortem reports are being submitted to concerned enquiry officer along with videocassette for further needful action at their end.

Material and Method

Prisoners are being referred to GGS Medical college Hospital for both tertiary care level treatment as well as to Modern Mortuary Complex for Postmortem examination by Forensic Medicine Experts not only from Central Jail Faridkot but Jails of adjoining Districts like Central Jail Ferozepur, Bathinda, District Jails at Mansa, Sri Mukatsar Sahib, Sub Jails at Fazilka, Moga and the only women Jail at District Bathinda. A retrospective study was carried out for custodial death cases brought over period of two years for Postmortem examinations done as per NHRC Guidelines, under Magisterial inquest (section 176 CrPC) from 01/01/ 2020 to 31/12/2021, in Department of Forensic Medicine, at GGS Medical College, Faridkot, Punjab. 45 cases of Custodial Deaths during this period were studied on the subjects of alleged circumstances prior to deaths as per Magisterial Inquest papers, treatment notes of Medical officer posted at Jail Hospital, Referral notes of Specialist Medical officers posted at District Hospitals, Observations by last attending Medical Faculties at referral tertiary care level Hospital associated with GGS Medical college, subsequent postmortem examination findings and cause of death reports prepared after receipt of Histo-pathological and chemical analysis reports from the Department of Pathology and chemical examiner to the Govt. of Punjab at Kharar respectively. The data so obtained was statistically analyzed.

Observations

Out of total 1210 autopsies conducted during this period, the number of custodial death cases was 45 which account to be 3.25% as compared to 19% of autopsy cases reported at tertiary care level mortuary in northern region of Punjab. This study observed that maximum cases were male (95%) and of age group 26-35 years (37.5%). Most prisoners died in hospital during treatment (78%). Natural causes of death were commoner than unnatural causes. Histopathological observations were most common for carcinoma (25%) followed by myocardial infarction (20%).

Out of 45 custodial deaths 95.56% (n=43) were male and 4.45% (n=02) were female. Among males maximum deaths occurred in jail custody (97.80%; n=44) and one male (2.20%) died in police custody. The proportion of overall custodial deaths was **highest in 26-35 years (36%)** age group followed by 46-55 years (22.50%) age group. (Table-1) A total of 39 (87%) prisoners received tertiary level medical care during terminal illness, while in 06 cases (**13%**) **Prisoners were either declared brought dead at Hospital** or died within 24 hours of admission and had not received significant medical care before their death. Cases of custodial deaths in which viscera reports (e.g. chemical analysis, histopathology, microbiological examination report etc.) were received and cause and manner of death was clear were included in this study. Out of these 45 cases in one brought dead case, cause of death could not be ascertained even after Pathological examination and Toxicological screening. 39 (**87%**) **died of natural causes** while 5 (11%) died due to unnatural causes. Among natural causes 40% cases had Septicemia with HIV/HCV/HBsAg/TB/Covid 19 positive status, 30% cases had Multiple Organ Dysfunction syndrome and 30% had chronic disease related complications. Five cases found to be RTPCR Positive during Covid 19 Pandemic period. Bodies were subjected to Partial Autopsy conducting only external examination under due Videography in presence of Enquiry officer cum Judicial Magistrate. Internal Postmortem examination was dispensed with due permission of Enquiry officer cum Judicial Magistrate and Cause of Death was ascertained considering Hospital treatment record and Medical Cause of Death Certificate issued by last treating physician. Pulmonary tuberculosis was diagnosed in 16% cases (n=16). (Table-4) Out of total 45 cases of judicial/police custody deaths **14 cases (31%) were found to be positive for TB or HCV or Covid 19 disease or multiple infections with HIV.** (Table-4) No case with history of homicidal death was

subjected to Autopsy. Suicide was allegedly reported in 2 cases (4.44%); one each in police and one in Jail/Judicial custody. Hanging was the method used for committing suicide in both the cases. In 04 cases admitted in altered sensorium with seizures and subjected to autopsy with alleged natural cause of death were found to be having evidence of old intracranial Hemorrhage at the time of Postmortem examination.

Table No. 1: Age wise distribution of custodial death cases:

Age Group	Male	Female	Transgender	Total	Percentage
18-25 years	01	00	00	01	02.22%
26-35	16	00	00	16	35.56%
36-45	06	00	00	06	13.33%
46-55	10	00	00	10	22.22%
56-65	05	01	00	06	13.33%
65-75	05	01	00	06	13.33%
>76	00	00	00	00	00.00%
Total:	43	02	00	=45	100.00%
Percentage=	=95%	=05%			

Table No.2 Based on Personal History of Drug abuse:

	2020	2021	Total no. of addicts	Percentage cases
Opium addiction	01	01	02	09.50%
Mult Drug abuser	01	02	03	15.00%
IV Drug abuser	00	02	02	09.50%
Tab Alprazolam	01	00	01	04.20%
Total	03	05	08	=38.10%

Table 3. No. of Inmates registered at OOAT/ De-addiction Centers:

Sr No.	Established OOAT/ De-addiction Center at Jails	Total No .of Inmates registered for treatment	Currently under treatment as on
1.	Central Jail Faridkot	1900	502
2.	Central Jail Bathinda	1680	1604
3.	Central Jail Ferozepur	685	326
	Total:	=4265	=2432

Table No.4 Prevalence of HIV, COVID 19 Ds, HCV and TB in custodial death cases:

Year	HIV	HCV	COVID-19 Disease	TB +	HIV+ HCV+ TB	HIV+ HCV+ COVID 19	HIV + HCV	COVID +TB	HIV + Covid-19
2020	00	01	01	02	01	00	00	00	00
2021	00	00	02	02	01	01	01	01	01

Table No.5 Based on Hospital Stay and interval between Referral from Jail Hospital and Death at Tertiary level Hospital:

Duration	Jail Hospital	District/Civil Hospital	Tertiary care Medical College Hospital
Within 24 Hours	13	17	11 cases
Within 07 days	00	01	06 cases
Within 1 month	00	00	03 cases
More than 1 month	00	00	01 case

**Table No.6: Prison Population statement as on 20-12-2022
(as retrieved from website <https://prisons.punjab.gov.in>):**

Sr No.	Jail	Male			Female			Transgender			Child	Total	Capacity %
		CT	UT	F.U T /CT	CT	UT	F.U T /CT	CT	UT	F.U T /CT			
1	CJ FDK	619	1395	01	24	103	02	00	00	00	01	2144	103%
2	CJ FZR	410	1209	06	19	73	00	00	00	00	01	1717	139%
3	CJ+ WJ BTI	544	1210	00	25	162	01	00	00	00	05	1754 +188	74% 65%
4	DJ MNS	201	569	00	08	46	00	00	00	00	01	824	190%
5	DJ SMS	143	942	00	00	00	00	00	00	00	00	1085	120%
6	SJ Mog a	13	69	00	00	00	00	00	00	00	00	82	109%
7	SJ FZK	19	57	00	00	00	00	00	00	00	00	76	158%

Discussion

Mortality rates are up to 50% higher for people in prison than for people in the wider community¹. Most deaths in custody are preventable through the adoption of relatively simple and inexpensive human-rights driven measures². There is no internationally recognized definition of a 'death in custody' which would, among other things, allow accurate, comparable data to be collated and analysed³. Some countries only classify deaths which occur in a detention facility as a death in custody, such as Italy. Other countries also include deaths in a wider range of situations such as:

1. Deaths that occur during transportation or people that have been transferred to a hospital or hospice in the community as part of their care while under a prison sentence or pre-trial detention (such as Argentina, Georgia, Pakistan, Scotland, Spain and the US)
2. Deaths while on temporary leave (Ireland includes people on temporary release or unlawfully at large; England and Wales includes people on temporary leave for medical reasons only)
3. Deaths which occur shortly after the person has been released from prison (within one month of temporary release in Ireland, and up to 10 days after release in Turkey).

In at least 9 countries, no information could be found on what is classified as a 'death in prison' which includes Austria, Canada, Central African Republic, Chile, Ecuador, India, Kazakhstan, South Africa, and Switzerland. In states where there is a definition in either law or policy some of the boundaries of what is included may be unclear⁴.

In present study the incidence of custodial death was found to be 3.25% however in previous studies from Northern region of Punjab conducted by Dr Jagdish Gargi (1995-97), Dr Vijay Vohra (2009-2010) and Dr Deeprattan Mittal (2011-14), it increased from 0.77% to 2.93% to 19.42% respectively. This increase in custodial deaths autopsies can be attributed to increase in number of referred cases in compliance to new guidelines and non availability of Forensic Medicine Specialist Doctors and two Doctors with five year experience in Postmortem work at all the Secondary care level District Hospitals. Predominantly the custodial deaths were

seen in the age group of 26-35 years suggesting increased involvement of younger age group in criminal activities. However 87% of cases found to be having natural cause of death, Death while one being under trial (51%) is serious matter of concern. Contrary to this observation Vohra has mentioned 71.4% deaths involving undertrial prisoners.

In present study 77.04% of inmates received medical care before their death. The studies of Vohra, Bardale and Mittal put this figure respectively at 55.71%, 64.28% and 69.56%. It points towards a positive trend of timely referral of sick custodial patients. Natural Deaths: The current study found that natural causes were responsible for majority of custodial deaths (about 95%).[4-12] Among natural deaths most of the deaths were due to pulmonary system involvement; pulmonary tuberculosis being the leading cause. This finding is supported by various other researchers.[4-6,11-14] However, Wobeser et al[9] and Frueshwald et al[10] found that majority of deaths were due to cardio-vascular diseases. This is attributed to overcrowding, closed living conditions, insufficient ventilation and poor nutrition in Indian jails as compared to western countries. In our study out of 102 cases in judicial/police custody 21.57% were having tuberculosis, 10.78% were HIV infected and 11.76% were HCV infected. Besides, 8.7% cases were infected with multiple infections. (Table-6) Bansal and Bardale found the prevalence of HIV respectively in 13.5% and 14.08% of prison inmates. From above observation it is clear that prisoners constitute high risk group for acquisition of these infections. Unnatural Deaths: The unnatural deaths comprised only 4.35% of cases which is lowest figure found as compared to figures reported by other authors. General welfare of prisoners and vigilance in Punjab jails might be comparably better than other study regions. The reason for this can be attributed to NHRC activism, media and general public awareness regarding custodial deaths, and constant fights of various NGO's against the custodial torture. Suicidal and accidental deaths were found to have equal incidence (2.17% each). In this respect, the present study differs from other researchers, who found overall higher incidence of suicides, and also the most common manner of unnatural death. (Table-4) However present study is in consonance with studies by other researchers like Vohra, Bardale, Bansal, Agnihotri, Sonawane and Sonar V et al as far as most common method used for suicide viz. hanging. Therefore authorities should be careful that the inmates are not in the possession of such materials which may help them in taking the extreme step of ending their lives.

No case of homicide has been noticed in present study and this indicates effective control of authorities over inmates. However one disturbing fact is that all deaths occurring under police custody were unnatural. (Table-4) Moreover these deaths had occurred shortly after arrest and one of the arrestee was detained without any entry in daily diary. These shocking practices used by police undermine public faith in law enforcement. Accidental deaths were due to drug overdose (poisoning) and accidental fall. The access of prisoners to poisons/drugs of abuse indicates lapses in jail security and has been found to be the commonest cause of unnatural deaths by few authors.[7]

Conclusion

The collection and publication of accurate, reliable data on deaths in prison is critical to inform policy and practice to understand the causes, prevent avoidable deaths and respond adequately when they do occur. Common reasons for the lack of data include a lack of resources or capacity to collect and share data, or a general lack of transparency or political will. Prison administrations, for example, may not want to share data on deaths in their facilities to avoid scrutiny.

In this study predominantly cause of found to be natural and infectious etiology is the leading cause compounded by high prevalence of HIV and HCV infections. However NHRC vide D.O. No. 4//7/2010-PRP & P dated 17/05/2010, advocated Medical examination of Prisoners

and incorporated tests for Tuberculosis(Histopathology and X-ray examination) in performa for health screening at the time of entry as well as periodically thereafter to facilitate provision of timely and effective treatment if any medical problem detected, Better maintenance of Health care facilities inside prisons, trained, sensitive, dedicated medical staff, regular supply of essential medicines and establishment of de-addiction centers in the prisons are few of important grey areas from medical point of view which need to be addressed on priority basis. Rehabilitation services to under trial prisoners with history of chronic multiple substance drug abuse and timely medical care to elderly should be a matter of right. An unnatural death need to be investigated as per provisions under section of 176 CrPC under Magisterial Inquest however sometimes as Prisoners are being referred to another Districts where tertiary level care is available at Hospitals associated with Medical colleges, issues of Jurisdiction arises. NHRC in case no. 41663/24/26/08-09-JCD Observed that serious cases like those mentioned in clauses (i) or (ii) of sub section [3] of 174 CrPC are being inquired into by Executive Magistrates and interpreted **section 176(1)(A) of CrPC** in order dated 04/09/2020 as correct position of law is that an enquiry by Judicial Magistrate is mandatory when there is reasonable suspicion of foul play, all other **cases of custodial deaths where death is natural or is caused by disease may be inquired into by Executive Magistrates.** Law commission also observed that Executive Magistrates and District Collectors only looked at these investigations as formalities and the findings did not inspire confidence. Therefore, **to give more sanctity** to such inquiry in **three circumstances viz. Death, Disappearance and Rape** in Police or Judicial Custody, the power has been given to the Judicial/ Metropolitan Magistrate by removing ambiguity in reference to **amended provision of the section 176 (1A) Cr.P.C.** which was inserted by an **Act of Parliament, 25 of 2005.** Similarly Due to non availability of Forensic Medicine Specialists at District Hospitals where District Jails exists and Prisoners are brought dead at Secondary care level District Hospitals, either cases are being referred to Mortuary situated hundreds of kilometers or Forensic Medicine Specialists need to be deputed at such hospitals for conducting Postmortem examinations as per **recent recommendations**¹² (supersession of previous recommendations from the Department of Medical Education and Research under Govt. of Punjab, vide letter no. 11/205/2017-4MERIII/2851-57 Dated 08/05/2019) according to which in case of custodial deaths, a Medical Board comprising of three doctors with **one from outside the institution** need to be constituted and at least **one of the doctors need to be MD (Forensic Medicine)** and at least **two doctors doing the postmortem examination should have 5 years experience in conducting Postmortem examinations.** and rest of doctors from different institutions. The Supreme Court's D.K Basu decision particularly with respect to recording detentions, informing families, producing suspects before magistrates and providing medical examinations should be adhered to by the police. Only a more humane approach towards prisoners and providing care and timely medical aid as a matter of right will go a long way to bring down the incidence of prison deaths in India.

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Conflict of Interest

Nil

Ethical issue

Nil

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