

Prisoner's suicides in india – Constitutional and Civil liability

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Abstract: Suicides by persons in custody, whether pre-trial detainees or convicted prisoners, is a troublesome and recurrent issue for jails and prisons. While suicide is recognized as a critical problem within the jail environment, the issue of prison suicide has not received comparable attention. The present paper deals with the constitutional position on suicides and also certain prevention methods for controlling suicides in prisons. The paper analyses constitutional position regarding suicides in prison and to look into various pronouncements of courts in this matter and try to derive some convincing and credible solutions and elucidations to the intricate problem of suicide in prison along-with formulating a dependable and steadfast suicide prevention programme.

Keywords: **prison suicide, legal position, constitution, suicide prevention, monitoring**

1. Introduction

Suicides by persons in custody, whether pre-trial detainees or convicted prisoners, is a troublesome and recurrent issue for jails and prisons. It was once assumed that this was largely a question of suicide by pre-trial detainees in jail, recent studies shows that, while the suicide rate is, indeed, much higher in prisons than in normal public.. Occurrence of two suicide cases including suicide in March 2013 in Tihar Central Prison underscore the need to understand the factors behind committing suicide in prison and framing a comprehensive action plan to prevent such suicides in future. While suicide is recognized as a critical problem within the jail environment, the issue of prison suicide has not received comparable attention. A data analysis of recent prison suicides so as to scrutinize the factors behind suicide and provides recommendations for the better identification and management of 'at-risk' prisoners as well as changing the general prison environment. It provides some general background on suicide and identifies a number of key activities that can be used as part of a comprehensive suicide prevention programme to reduce suicide in correctional settings.

Ordinarily, government has no duty to protect any specific individual from harm, including self-inflicted harm, such as suicide. Courts have, however, found that there are increased obligations to prisoners and detainees, largely premised on the fact that their freedom has been taken away, and they are therefore not able to obtain assistance for themselves,

including necessary medical care (of which psychological, psychiatric and mental health care are a part). Nor are their friends and family in a position to do so, given their incarceration. The prisoner or detainee and the place that they are confined is under the "exclusive control" of the agency and its staff, who are responsible for the care and custody of the prisoner or detainee. Accordingly, courts, have found that some duty does exist for correctional facilities to protect prisoners from suicide, just as it must furnish necessary medical care, and some level of protection against assaults by other prisoners or the use of unnecessary force by staff members. During the 5 years 2007-2011¹, the average prison population in India is 3,76,000 (with minimum as 3,69,000 and to maximum as 3,84,700). The overall average death rate in prison is 375 whereas the average suicidal death rate is 16.9. Based on 5 year average, it is found that 1411 deaths were reported every year in prison whereas 63.4 cases of suicides were reported in prison. In this paper, We try to evaluate the constitutional position and court judgments in respect of suicide in prisons and also necessary preventive measures to be taken in prisons.

2. Aim and objectives :

To analyse constitutional position regarding suicides in prison and to look into various pronouncements of courts in this matter.

To derive some convincing and credible solutions and elucidations to the intricate problem of suicide in

prison along-with formulating a dependable and steadfast suicide prevention programme.

Following are the issues/problems that will be dealt :

1. To understand and highlight the magnitude of suicide in prison in India
2. To comprehend the reasons behind committing of suicide in prison- the causative and contributory factors of suicide in prison
3. To elucidate the legal implication and resultant legal obligation in case of suicide in the prison
4. To decipher the signs and symptoms of a possible suicide
5. To design a suicide resistant prison cell that minimise the chances of committing suicide in the prison
6. To design and devise a credible and workable suicide prevention strategy and action programme

3.Methodology : This study using inferential approach based on the extensive study of the various national and international research reports, survey reports available on website, published official documents and academic literature. Mostly secondary data available through official documents are used.. The aim and object is to derive some convincing and credible solutions and elucidations to the intrigue problem of suicide in prison.

4.The legal position :

With respect to the custodial death due to suicide or assault by other co-inmates or due to medical negligence is quite clear and well settled. The Hon'ble Supreme Court and High Courts in number of judgments have upheld the vicarious liability of the State to pay compensation to the next of the kin of the deceased in such cases. The Hon'ble Courts has upheld that the inmates in prison are under the care and protection of the State and the State is responsible for their safety, security and well- being. A duty is cast on the jail authorities to look after the wellbeing including the protection of lives and liberties of the jail inmates.

The Hon'ble Supreme Court in Nilabati Behera case⁴ asserted that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21[Right to life and personal liberty] of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life. The State has a duty of care, to ensure that the guarantee of Article 21 is not denied to anyone. This duty of care is strict and admits no exceptions. The State must take responsibility by paying compensation to the near and dear ones of a

person, who has been deprived of her/ his life by the wrongful acts of its agents. However, the Court affirmed that the State has a right to recover the compensation amount from the wrongdoers. There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life. In another landmark judgment,

Hon'ble Supreme Court in D. K. Basu case⁵ said that it is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is a is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrongdoer.

Based on the legal pronouncement, the following points can be deduced:

1. Vicarious Liability of the State- Since inmates in prison are under the safe custody of the State, thus, it is the responsibility of the State to ensure safety, security and wellbeing. In case of any negligence or violation, the State is vicariously liable for the acts of omission or commission on the part of jail authorities.

2. Liability under Public Tort- As compared to civil liability under the laws of private torts, for violation of fundamental rights, the remedy is also available in public law since the purpose of public law is not only to civilize public power but also to assure the Legal implication and Liability of the State and prison authorities.

Several incidents are reported wherein the detainee or arrested person commits suicide while in the police custody. The general response of the police officials is that since it is a case of suicide which is voluntarily act of the deceased, so police officials (under whose custody the detainee was kept) are not responsible as there is no over act of commission on their part. Therefore, they should not be held responsible for such suicidal death. However, the legal position is somewhat different than what is commonly perceived by the police/prison officials. The legal position with respect to the custodial death due to suicide or assault by other co-inmates or due to medical negligence is quite clear and well settled. The Hon'ble Supreme Court and High Courts in

number of judgments have upheld the vicarious liability of the State to pay compensation to the next of the kin of the deceased in such cases. The Hon'ble Court has upheld that the inmates in prison are under the care and protection of the State and the State is responsible for their safety, security and well-being. A duty is cast on the jail authorities to look after the wellbeing including the protection of lives and liberties of the jail inmates.. The Supreme Court asserted that convicts, prisoners or under-trials are not denuded of their fundamental rights under Article 21[Right to life and personal liberty] of the Constitution and there is a corresponding responsibility on the police and prison authorities to make sure that persons in custody are not deprived of the Right to Life.. The Hon'ble Court said that the purpose of law is not only to civilize public power but also to assure people that they live under a legal system which protects their interests and preserves their rights. Therefore, the High Courts and the Supreme Court as protectors of civil liberties not only citizens that they live under a legal system wherein their right and interests shall be protected and preserved. Though the State is responsible to pay compensation on account of principle of vicarious liability but it is entitled to recover the amount from wrong-doer or delinquent officials are responsible for act.

In Rudul Sah v. State of Bihar and Another⁶, [1983], the Hon'ble Supreme Court held that in a petition under Article 32 of the Constitution, this Court can grant compensation for deprivation of a fundamental right. That was a case of violation of the petitioner's right to personal liberty under Article 21 of the Constitution.

Hon. Supreme court held that Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. The expression "life or personal liberty" in Article 21 includes the right to life with human dignity and thus it would also include within itself a guarantee against torture and assault by the State or its functionaries. The precious right guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. (D.K.Basu Vs. State of W.B. 1997)

Various high courts held that

"It is duty of the jail authorities to ensure safety and security of the inmates of the jail. Only when they have been negligent on

their part, such an incident could take place. Though the authorities have termed the incident as a suicide, (Banalata Dash Vs State Of Orissa & Ors. 2012)⁷

"It is no doubt true that a prisoner enjoys all his civil/Fundamental rights except those expressly removed by statute/prison rules. It was held by English Courts that there is a substantial overlap between the maxims *novus actus interveniens* and *volenti non fit injuria*. In principle both can apply to the suicide of a sane adult. (Puppala Seetaramaiah vs Superintendent, Sub-Jail And others 2002 Andhra Pradesh HighCourt)⁸

5.Prison Suicide - Causes, Contributors and Predictors :

The causes of suicide are complex. Some individuals seem especially vulnerable to suicide when faced with a difficult life event or combination of stressors. However, it's possible to analyse the common risk factors and create a general profile that can be used to identify and situations that present the highest risk. The challenge for suicide prevention is to identify people who are most vulnerable, under which circumstances, and then effectively intervene. Some of the factors are sociocultural factors, psychiatric conditions, biology, genetics, and social stress. The ways in which these factors interact to produce suicide and suicidal behaviours is complex and not well understood. Nevertheless, in various combinations, they have been used to identify specific high-risk groups.

Knowledge about suicide risk in custody (judicial custody or police custody) is important.. While suicide is recognized as a critical problem within the jail environment, the issue of the precipitating factors of suicidal behaviour in jail is well established. It has been theorized that there are two primary causes for jail suicide — first, jail environment is conducive to suicidal behaviour and, second, the inmate is facing a crisis situation. From the inmate's perspective, certain features of the jail environment enhance suicidal behaviour: fear of the unknown, distrust of the authoritarian environment, lack of apparent control over the future, isolation from family and significant others, shame of incarceration, and the dehumanizing aspects of incarceration.

The following are characteristics that make suicides in prisons more likely:

1. Authoritarian environment Persons unaccustomed to a regimented environment can encounter traumatic difficulty in a prison setting.
2. No apparent control over the future Following incarceration, many inmates experience a feeling of helplessness and hopelessness. They feel powerless and overwhelmed.

3. Isolation from family, friends, and community For incarcerated individuals, support from family and friends may seem far away, especially with restricted visiting and telephone privileges.

4. The shame of incarceration Feelings of shame (often found in misdemeanants) are often inversely proportionate to the gravity of the offences committed. Frequently, such feelings develop in those persons who have never been arrested before or who have a limited arrest history.

5. Dehumanizing aspects of incarceration Viewed from the inmate's perspective, confinement in even the best of jails is dehumanizing.

6. Lack of privacy, association with acting-out individuals, inability to make your own choices, and strange noises and odours can all have a devastating effect. Many facilities are old and overcrowding can create stress.

7. Approaching an emotional breaking point Each individual has a breaking point where they can no longer deal with their stressors. This point can be influenced by the duration, time and situation of the stressors. Inmates attempting suicide are often under the influence of alcohol and/or drugs and placed in isolation.

In addition, many jail suicide victims are young and generally have been arrested for non-violent, alcohol-related offences. Although prison suicide victims share some of these characteristics, the precipitating factors in suicidal behaviour among prison inmates are somewhat different and fester over time. Identifying individuals who are higher risk for attempting suicide is important to prevent suicide. There are six factors highly related to suicide – mental health designation, custody classification, days in current cell, type of housing, age, and number of disciplinary reports. Another four factors are associated with increased risk – time left on sentence, marital status at intake, number of assault-related disciplinary reports, and life/death sentence.

6. Suicide prevention methods:

Suicide has no single trigger and no single solution. A multi-disciplinary approach is required for effective prevention. Common profiles of prison suicides must be viewed with caution. Psychopathology alone cannot explain incidents of prison suicide. Structural analysis of the prison environment is a critical aetiological factor that must be included in understanding of prison suicide.

The suicide prevention plan should include the following elements:

1. Identification. The receiving screening form should contain observation and interview items related to the inmate's potential suicide risk.

2. Training. All staff members who work with inmates should be trained to recognize verbal and behavioural cues that indicate potential suicide.

3. Assessment. This should be conducted by a qualified mental health professional, who designates the inmate's level of suicide risk

4. Monitoring. The plan should specify the facility's procedures for monitoring an inmate who has been identified as potentially suicidal. Regular, documented supervision should be maintained.

5. Housing. A suicidal inmate should not be placed in isolation unless constant supervision can be maintained. If sufficiently adequate staff is not available to provide constant supervision when needed, the inmate should not be isolated. Rather, he/she should be housed with another resident or in a dormitory and checked after every 10- 15 minutes. The room should be as nearly suicide-proof as possible (that is, without protrusions of any kind that would enable the inmate to hang him/herself).

6. Referral. The plan should specify the procedures for referring potentially suicidal inmates and attempted suicides to mental health care providers or facilities.

7. Communication. Procedures for communication between health care and prison personnel regarding the status of the inmate should exist, to provide clear and current information.

8. Intervention. The plan should address how to handle a suicide in progress, including how to cut down a hanging victim and other first-aid measures.

9. Notification. Procedures for notifying prison administrators, outside authorities, and family members of potential, attempted, or completed suicides should be in place.

10. Reporting. Procedures for documenting the identification and monitoring of potential or attempted suicides should be detailed, as should procedures for reporting a completed suicide.

11. Review. The plan should specify the procedures for medical and administrative review if a suicide does occur.

7. Conclusions: The jail authorities can assess the possible suicidal attitude prisoners and take necessary preventive measures through action plans.

Action Points

1. Minimize inactivity and boredom

2. Increased recreation and schooling (involving more computer purchases and usage),
3. Introduction of an anti-bullying policy,
4. A streamlined prisoner grievance process,
5. Improved notification of Parole decisions.
6. Interaction with the outside world particularly with regard to family and friends including free access to Samaritan services,
7. visiting welfare groups (NGO's) Participate in constructive activities such as employment, education and programs that build competency and address offending behavior

Administrative measures

The emphasis of general measures designed to reduce stress and promote coping mechanisms rather than concentrate on the recognition of the suicidal behaviour;

Direct efforts towards reducing stresses and increasing coping mechanisms in the prison environment, rather than dealing with the issue in terms of some kind of illnesses; Changes in internal cultures and management - a properly managed and motivated service will deliver a high standard despite resource constraints and administrative barriers. This depends on appropriate behaviours being modelled by its leaders; Changing the physical and social environments of prisons and offering opportunities for staff development and training; Reducing the social isolation, segregation and boredom of prisoners, as these factors undermine coping mechanisms; Civilising the system through case management, the modelling of appropriate behaviour by staff, defining the prison officer role in broader terms than custody and security, and engaging prison officers in the

treatment and rehabilitation of prisoners; Optimal staff allocation including staff rosters and position duties.

It is the responsibility and duty of the jail authorities to ensure safety and security of the inmates of the jail. Only when they have been negligent on their part, such an incident could take place. Though the authorities have termed the incident as a suicide, saving fundamental right of prisoner's and preventing them from suicidal tendencies is an important task before the Indian civilization.

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