

## An Overview of Police Custodial Death Cases in Malaysia

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**Abstract:** This article will give an overview on the issues pertaining to death in custody ranging from custodial death cases, inquests, protection of detainees in police custody, and constitutional rights of the detainees. The cases of custodial deaths due to police brutality are a serious issue. Studies show that the figures of custodial deaths due to misfeasance of the police in Malaysia are alarming. This of course will undermine and erode the public's confidence in the police force for death in custody will raise the public interest and attract media attention. It is one of the worst crimes in a society governed by the rule of law, and poses a serious threat to an orderly civilised society. Torture in custody infringes the basic rights of the citizens and is an affront to human dignity. Hence, it is important to pay urgent attention to this matter, and drastic measures should be taken to avoid or reduce the deaths in police custody. At the end of the article, the writer will make recommendations for the purpose of improving the present system.

**Keywords:** Custodial Deaths, Inquests, human rights, Police Custody, Detainees.

### INTRODUCTION

Human life is intrinsically valuable and sacrosanct. Hence, Article 5 (1) of the Federal Constitution 1957 (Malaysia) had provided that no person shall be deprived of his life or personal liberty save in accordance with law. It is clear that Federal Constitution 1957 values human life and advocates for its protection.

No doubt, the police are a legitimate enforcement body responsible for fighting crime. However, the police must always follow the rules and procedures to ensure that the individuals who are being interrogated are not physically and mentally tortured in order to get information during their investigations. The police also have great obligation to ensure that those who are detained under police custody are safe as they have taken full control over the detainee. Custodial death due to misfeasance by the police should not occur in a constitutional democracy like Malaysia. There should be zero death of detainees in police custody.

### CUSTODIAL DEATH CASES

In Malaysia, legal provisions concerning deaths in custody are provided in the section 334-338 of the Criminal Procedure Code, section 299, 300, 301, 304 of the Penal Code and Practice Direction No. 2/2014 produced by the Office of the Chief Registrar, Federal Court of Malaysia. However, all provisions only underline the procedures on managing death investigations and inquest proceedings on deaths in custody, as well as the punishment if a person is suspected to have caused one's death in detention, without giving a specific definition for deaths in custody [1]. There have been many cases of custodial deaths reported in Malaysia from previous years. I will

list down here a few cases of death in police custody for our deliberation [2]:

- Japanese national Nobuhiro Matsushita died in police custody at a police station in Subang Jaya, Selangor on 8 June 2013. According to media reports, Nobuhiro Matsushita may have been suffering from mental illness. He was arrested for threatening a law enforcement officer on 2 June 2013, and was subsequently found hanged in his cell.
- Malaysian P. Karuna Nithi, a 42 years old engineer, died in police custody at the Tampin Police District Headquarters in Negeri Sembilan on 1 June 2013. He went to the police station to report a domestic incident on 31 May 2013 but was instead arrested for causing hurt. He died in police custody the next day. The autopsy report, according to the media, found 49 injury marks on his body.
- Malaysian R. Jamesh Ramesh died in police custody in a lock-up in Penang on 26 May 2013, within 24 hours of having been arrested for allegedly taking drugs. The exact causes and circumstances of his death remain unknown, although police reportedly declared that it was caused by liver failure.
- Malaysian N. Dhamendran died in police custody in Kuala Lumpur on 21 May 2013. According to reports, he died due to a blunt force trauma 10 days

after arrest, with his body bearing possible signs of torture. According to an autopsy report, his ears had wounds from a stapler, and he had 52 injury marks and overlapping bruises.

- On 14 January 2013, Malaysian Sugumar Chelladuray, who reportedly suffered from mental illness, died in Hulu Langat, Selangor shortly after arrest, and while still in handcuffs. According to media and other report, four policemen had pursued him for damaging public property, and subsequently beat him up. The police have denied beating him. An autopsy found that Sugumar died of heart failure.
- Cheah Chin Lee, who died on 13 August 2012, is another example of a death in custody. The official report states that the death was the result of asphyxia due to hanging. Cheah's death took place within a 5-hour period of arrest and only 20 minutes in the lock-up. There are questions as to why Cheah was not properly monitored and further, why a suspect in a lock-up would commit suicide.
- On 14 January 2013, Chang Chin Te, 30 years old, died in the USJ 8 Police Station lock-up. Police told Chang's father that he was a suspect in a house break-in case and they had held him for 4 days. The deceased's body was badly bruised.
- A. Kugan, 38 years old, died in police custody in 2009 at Taipan Police Station, Subang Jaya. Prior to his death, the family was not aware of his detention as they were not informed by the police. The family only became aware when they were informed of his death on 20 January 2009. The deceased's body showed extensive injuries from beatings he sustained during his detention.

#### INQUIRY OF DEATHS (INQUEST)

In Malaysia, the Judiciary had established 14 Coroners' Courts in April 2014 due to widespread public concern over the increase in custodial deaths, the Coroners' Courts are established to inquire into the circumstances under which persons had died. The coroners' Courts are presided by senior Sessions Court Judges [3]. Before the establishment of the Coroners' Courts in April 2014, all inquiry of deaths proceeding was conducted by a magistrate. Essentially, an inquest or inquiry of deaths is a proceeding under the Criminal Procedure Code. It means an inquiry by a coroner with a view to record a finding as to the cause of death and to any of the circumstances connected therewith in regard to which the public prosecutor may also have directed a coroner to make inquiry. The language used under the relevant provision in the Criminal Procedure Code clearly reveals that an inquest is not, by any stretch of the interpretation, a trial. In a criminal trial, a charge is preferred against a particular person, and this is a necessary element in a criminal trial. The inquiry is to determine when, where, how and after what manner the deceased came by his death and also whether any

person is criminally concerned in the cause of the death. In so doing, all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death are relevant [4].

In other words, the purpose of the inquest is limited to arriving at a verdict consistent with the physical cause of death. Inevitably the circumstances in which the death occurred must play a part in weighing the evidence before the inquest [5]. Under Criminal Procedure Code, provisions regarding to inquiries of deaths are provided in Part III Chapter XXXII, and inquiries into the cause of death of a person in custody of police is specifically provided in section 334 of the CPC:

*“When any person dies while in the custody of the police or in a psychiatric hospital or prison, the officer who had the custody of that person or was in charge of that psychiatric hospital or prison, as the case may be, shall immediately give intimation of such death to the nearest Magistrate, and the Magistrate or some other Magistrate shall, in the case of a death in the custody of the police, and in other cases may, if he thinks expedient, hold an inquiry into the cause of death.”*

The proceedings of inquest give great assistance to parties in a civil suit, since the parties can rely on the evidence in the inquest to prepare their case. This was what happened in the case of *Selvi a/p Narayan & Anor (Pentadbir bersama Estet dan tanggungan Chandran a/l Perumal, simati) v Koperal Zainal bin Mohd Ali & Ors* [2017] MLJU 11. In this case, one Chandran A/L Perumal who was detained by the police on suspicion of being involved in the kidnapping/abduction of a newborn baby died whilst in police custody. The plaintiffs were deceased's wife and children as well as the estate of the deceased. They alleged that the deceased died as a result of the negligence of the police. From the judgment, we can see that all the parties including the High Court judge relied on evidence from the inquest conducted by the session judge.

In another case, *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby* (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal [2015] 1 MLJ 353, the deceased met his death while under remand at the Taipan Police Station. The deceased's body showed extensive injuries from beatings he sustained during his detention. No inquest was held under section 334 of the CPC. In this case, the plaintiff (the mother of the deceased and the administratrix of the estate) launched a civil suit claiming damages due to the unlawful death of the deceased in police custody. At the appeal stage, the Court of Appeal was perturbed by the fact that no

inquest was held as permitted by section 334 of the Criminal Procedure Code as there were many unanswered questions and common sense demanded that only a full public inquiry would answer those questions. This demonstrated that an inquiry of death is very much relevant to a civil suit.

### PROTECTION OF DETAINEES IN POLICE CUSTODY

In essence, all lock-ups are subjected to Lock-up Rules 1953, and it applies to all detainees who are being detained in gazetted lock-ups, which cover, inter alia, the process of admission and release as well as the minimum standard of treatment towards detainees. This is to protect and ensure the rights of a detainee whose liberty is being deprived in accordance with law as detainees are vulnerable towards the risk of human rights violations during police custody. The relevant parts of the Lock-Up Rules 1953 which relate to the process of admission and release as well as the minimum standard of treatment towards detainees are reproduced as follows:

#### **“ADMISSION AND DISCHARGE**

.....

10. The Medical Officer shall so far as possible examine every prisoner as soon as possible after admission to a lockup and shall certify whether the prisoner is fit for imprisonment and, if convicted the class of labour which he can perform.

#### **TREATMENT OF PRISONERS**

13. Every prisoner shall be supplied with bedding which shall be changed and washed as often as may be necessary but never less than once a month.

14. Notices in English, Romanised Malay, Chinese and Tamil setting forth the facilities to which prisoners are entitled as regards communication with friends or legal advisers, the granting of bail and the provision of medical assistance shall be displayed at the entrance to each lockup. In all cases where it is necessary the contents of the notice shall be communicated to all prisoners in a language they understand.

.....

#### **STAFF**

35(1) The Officer-in Charge or the Deputy-Officer-in-Charge shall frequently and never less than once a day inspect all parts of each lockup and shall see every prisoner confined there in at least once in every twenty-four hours and shall visit each lockup at an uncertain hour of the night at least once in every seven days.

(2) A police officer shall be detailed daily by the Officer-in-Charge to visit cells at least once each night to see that they are secure and to check the number of prisoners.

36. The Officer-in-Charge or the Deputy-Officer-in-Charge shall without delay report to the Medical

Officer any case of apparent mental disorder or of injury to or illness of any prisoner.

37. The Officer-in-Charge or the Deputy-Officer-in-Charge shall upon the dangerous illness or death of any prisoner give immediate notice thereof to the most accessible known relative of such prisoner.

38. The Medical Officer shall visit each lockup whenever requested to do so by the Officer-in-Charge, and he shall enter in the Journal his comments on the state of the lockup and the prisoner confined therein.

39. The Medical Officer shall notify the Officer-in-Charge of any prisoner who appears to him to be mentally disordered or of unsound mind.

40. Whenever the Medical Officer is of the opinion that the life of any prisoner will be in danger by his continued confinement in a lockup or that any prisoner is totally and permanently unfit for confinement, he shall immediately state his opinion and the grounds thereof in writing to the Officer-in-Charge, who shall forthwith forward the same to the President of a Sessions Court or to a First Class Magistrate for transmission to the Menteri Besar of the State or to the Resident Commissioner of the Settlement, as the case may be.

41. The Medical Officer shall whenever he visits a lockup to examine the food supplied to prisoners and shall enter in the Journal his comments thereon.

#### **SUBORDINATE POLICE OFFICERS AND CONSTABLES**

42. Subordinate police officers and constables shall at all times be responsible for the safe custody of prisoners under their charge and shall count the prisoners frequently and always —

- on receiving charge;
- on handing over charge; and
- on leaving any building or work, and shall enter the muster in the Journal and shall sign the same.”

The relevant parts of the Lock-up Rules mentioned above intend to ensure the rights of detainees and to avoid any unfortunate incidents whenever an individual is being detained by the police. Although the police have the authority to detain any individuals for investigation as stated in Criminal Procedure Code, it does not mean that a suspect does not have any rights and can be treated in cruel, inhuman or degrading manner.

#### **CONSTITUTIONAL RIGHTS**

It should be noted that every person held in custody, by police or prison authorities, retain his basic constitutional rights except for his right to liberty and a qualified right to privacy. The police play a vital role in safeguarding our lives, liberty and freedoms. But the police must act properly, showing respect to the human rights of the people, remembering that they are also beneath the law, not above it and can be held liable for

the violation of human rights. Article 5 of the Federal Constitution states that:

*“No person shall be deprived of his life or personal liberty save in accordance with law.”*

It is noted that the right to life and personal liberty contained in Article 5 of Federal Constitution encompasses all basic conditions for a life with dignity and liberty. The right to life guaranteed by Article 5 of the Federal Constitution is not merely a fundamental liberty but is the basic human right from which all other human rights stem. It is basic in the sense that the enjoyment of the right to life is a necessary condition for the enjoyment of all other human rights.

The Court of Appeal in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 MLJ 261 adopted a broad approach to the definition of “life” in Article 5 (1) of the Federal Constitution. Gopal Sri Ram JCA stated that:

*“...the expression life does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these are the rights to seek and be engaged in lawful and gainful employment.”*

In India, Article 21 of the Indian Constitution is *in pari materia* with our Article 5. The Supreme Court of India has given a broad and liberal interpretation to Article 21 of the Indian Constitution. In the case of *Kharak Singh v State of U.P.* AIR 1963 SC 83, the Supreme Court stated that the term

*“life is something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, of the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world...”*

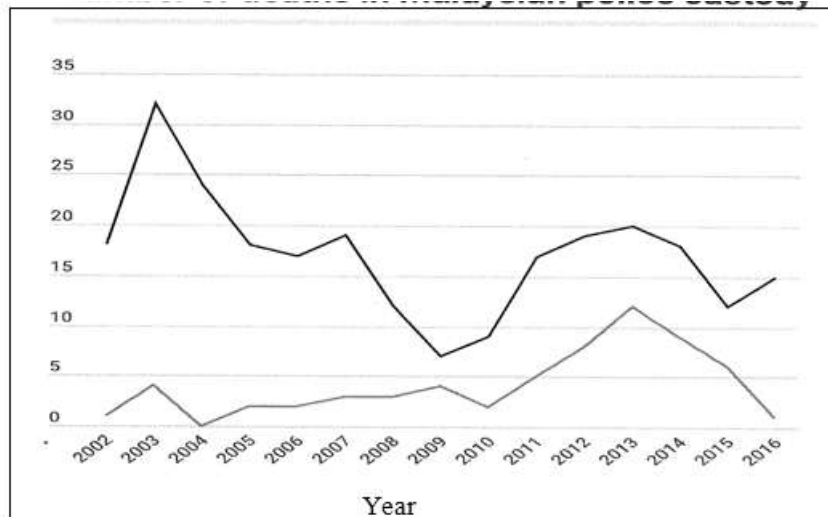
In the case of *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ

353, the Court of Appeal referred to Article 5 and 8 of the Federal Constitution, and stated that the basic premise of both articles is universal and that is every human life is sacred and every citizen of this country, including suspects of crimes or convicted criminals, is expected to be treated with human decency during their detention entitled to the protection of the law. Thus, any acts or omissions of police officers or prison authorities which cause death in custody are in violation of Articles 5 and 8 of the Federal Constitution. Besides, we also can refer to Article 3 of the Universal Declaration of Human Rights 1948 (UDHR) which states that everyone has the right to life, liberty and security of person. Then, Article 5 of the UDHR further states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Since the UDHR is consistent with our Federal Constitution, the Universal Declaration of Human Rights 1948 is part and parcel of our jurisprudence as the international norms in the UDHR are binding on all member countries unless they are inconsistent with the member countries' constitutions.

#### DISCUSSION

As mentioned earlier, legal provisions concerning deaths in detention are provided in the Criminal Procedure Code, the Penal Code and Practice Direction No. 2/2014 produced by Office of Chief Registrar, Federal Court of Malaysia. However, all provisions only underline the procedures on managing death investigation and inquest proceedings on deaths in detention as well as the punishment if a person is suspected to cause one's death in detention, without giving a specific definition on deaths in custody. Thus, a study should be carried out to determine what type of cases that fall under the definition of deaths in custody. For instance, can deaths in custody refer to deaths of persons who have been arrested or taken into detention? The death may have taken place on police, private or medical premises, in a public place or in a police or other vehicle. Hence, a specific definition is required.

There have been regular reports about police officers responsible for a range of human rights violations, including torture and other ill-treatment, resulting in some cases in the death of detainees. The statistics on custodial deaths reported by Malaysiakini are worrying. The statistics is set out as follows [6]:



**Fig-1: Number of Deaths in Malaysian Police Custody**  
(Bottom Line) - No. of Official cases (Top Line) - No. of publicised cases

**Sources:**

- Parliamentary reply, Home Minister Ahmad Zahid Hamidi to M. Kulasegaran
- Suaram database on deaths in police custody

It is alarming that the numbers of publicised cases shown above are still very high. Therefore, what was said by Justice S. Nantha Balan in *Selvi a/p Narayan & Anor (Pentadbir bersama Estet dan tanggungan Chandran a/l Perumal, simati) v Koperal Zainal bin Mohd Ali & Ors* [2017] MLJU 11 needs to be remembered. He had this to say:

*“In a modern, mature and evolved constitutional democracy such as Malaysia, it is axiomatic and imperative there should be zero deaths of detainees in police custody.”*

Hence, it is important to pay urgent attention to this matter, and drastic measures should be taken to avoid or reduce the deaths in police custody. The government acted in February 2004 when the then Prime Minister Tun Abdullah Ahmad Badawi established a Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police (Police Commission) as a government initiative to enhance accountability. Among the recommendations released in 2005 was for an Independent Police Complaints and Misconduct Commission (IPCMC) to be set up to ensure that the police observe and apply laws, rules and procedures. In the meantime, the Police Commission also recommended that a code of practice be adopted with regard to the arrest and detention of persons. It called for an independent Custody Officer to be responsible for the welfare and custody of every detainee. Nevertheless, the police had objected to the IPCMC and an Enforcement Agencies Integrity Commission (EAIC) was established in lieu in 2011 [7].

The Star newspaper headline “Three times not the charm,” on March 5, 2017 reported by Shaila Koshy further explained that the EAIC was tasked to oversee a range of government agencies including the police and has the powers to refer any complaints of misconduct it receives to the appropriate Disciplinary Authority or to the Public Prosecutor. However, this body has so far been unable to systematically investigate all reports of deaths in custody and other human rights violations by police officers in Malaysia. This appears to be due, in part, to the lack of adequate resources for such a broad mandate. Under the same newspaper headline, the former EAIC Chairman Datuk Yaacob Md Sam, had lamented that even when the EAIC recommended stiff action to the disciplinary authority between 2012 and 27 April 2016, they did not appear to heed its recommendations. For example, in one case, a six-month suspension of the officer’s emolument (salary and allowances) was recommended, but the individual disciplinary authority had come back to say that it was only cautioning the officer. There is still no independent institutional mechanism effectively performing an oversight function to the police in Malaysia. Perhaps the government should reconsider setting up an IPCMC to make the police force a professional organisation. However, for an independent enquiry system to be effective, it must be entirely politically neutral and unafraid to prosecute if needed, else we risk the compounding the problem in bringing the police to proper accountability. This was said by Tun Mohamed Dzaiddin bin Hj. Abdullah, former Chief Justice of Malaysia at the Public Forum held by the Malaysian Bar [8].

**CONCLUSION AND RECOMMENDATIONS**

The efforts of the government to enhance its accountability have been seen to be futile. The statistics shown by the Malaysiakini (numbers of publicised

cases) reveal that the present system is not workable, or else the figures should have come down. These alarming statistics once again highlight the need for an overhaul of the whole system to tackle the problem. The cases of custodial deaths due to police brutality are a serious issue. Whenever death occurs in custody, it raises the public interest and attracts media attention. It is one of the worst crimes in a society governed by the rule of law, and poses a serious threat to an orderly civilised society. Torture in custody infringes the basic rights of the citizens and is an affront to human dignity. Death in custody due to police brutality must STOP! The Courts must play a pivotal role in countering death in custody cases. The Courts should award substantial damages once liability is established in a civil suit regarding death in custody. It is hoped that this substantial award will send out a clear message to the police or prison authorities as a deterrent against future breaches. However, the Courts need to strike a right balance between the rights of the police officer to conduct an investigation and the rights of the detainee as provided in Part II of the Federal Constitution. Based on the statistics shown by Malaysiakini, there have been no improvement in the cases of deaths in custody. Therefore, I am of the view that the time has come for relevant authorities to conduct a study on the following issues: (i) Give a specific definition on deaths in custody; (ii) Establish an independent Police Complaints and Misconduct Commission; and (iii) Allow access to the Standard Operating Procedures (SOP) of the Police on Lock-Up Management.

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