

THE LEAFLET

CONSTITUTION FIRST

Custodial death in Chennai: How collusion of institutions contributes to impunity

Interview with Henri Tiphagne, executive director of People's Watch.

SARAH THANAWALA · MAY 4, 2022

ON April 18, V Vignesh was arrested by the Chennai police for allegedly possessing marijuana and a knife. On April 19, the following day, he died in police custody due to alleged custodial torture. While the officials have denied custodial violence, the family accuses the police of brutality, claiming it to be yet another case of custodial death.

Henri Tiphagne is the founder and executive director of Madurai-based human rights organisation People's Watch, which works to protect human rights through monitoring human rights violations, intervention, and building solidarity with people's struggle for human rights. Tiphagne is assisting Vignesh's aggrieved family through Joint Action Committee against Custodial Torture, fighting for Vignesh's custodial justice. His insight provides a valuable perspective in the case.

Tiphagne spoke with *The Leaflet* about the legal implications in this case.

Edited excerpts from the interview:

Q: The police and the Tamil Nadu Chief Minister have adopted the narrative of health complications for Vignesh's death. With your extensive knowledge of the case, could you provide us with information on what transpired on the night of April 18 when Vignesh and Suresh were arrested?

A: On the night of April 18, police stopped Vignesh and his brother-in-law Suresh, who were travelling by an auto-rickshaw in the locality of Kellys, Chennai. Vignesh voluntarily handed over a knife that he claimed to use for sharpening horses' nails for his occupation as a horse rider. From 11 p.m. on April 18 to 2.30 a.m. on April 19, two teams of police officers gruesomely assaulted Vignesh and Suresh, in the presence of the auto-rickshaw driver. The owner of the horse rode by Vignesh was called on the spot to sign a paper about Vignesh's employment. Thereafter, they were held at K-2 Ayanavaram police station and continued to be tortured and beaten.

In the morning of April 19, Vignesh was moved to a neighbouring G-5 Secretariat Colony police station, where he allegedly fell sick and was taken to a private hospital. The police claim Vignesh died while he was being transferred from the private hospital

to Kilpauk Medical College Hospital. Suresh was remanded to judicial custody at Puzhal II Central Jail.

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Later in the morning, Vignesh’s brothers and aunt were taken into custody at the G-5 police station, and informed of Vignesh’s death without being offered to show them his body. They continued to be held until 4 p.m. in the evening of the same day, that is, April 19. An inspector from F-4 Thousand Lights police station offered them two cash bundles of Rs. 50,000 each. Only the elder brother was taken for the post-mortem where he was shown Vignesh’s body in the presence of the judicial magistrate.

The eye-witnesses, for instance, the auto-rickshaw driver and the owner of the horse ridden by Vignesh, coupled with around 5,000 CCTV cameras around the Kellys neighbourhood, indicate evidence that leads to a case of custodial death.

Q: You mention that Vignesh and the co-accused Suresh were arrested during night rounds, and the resulting violation of [Section 50A](#) of the Criminal Procedure Code [CrPC]. Can you elaborate on how these violations are attracted in Vignesh’s case and the duties of the police officers?

A: The law of arrest as laid down (by the Supreme Court) under the guidelines in the case of [D.K. Basu, Ashok K. Johri versus State of Bengal, State of U.P. \(1996\)](#) is incorporated in the various provisions of the CrPC; for instance, [section 50 A](#) (obligation of person making arrest to inform about the arrest, etc., to a nominated person) of CrPC.

In this case, the law of arrest was clearly not followed. Neither Suresh’s mother nor Vignesh’s brothers (Vignesh had five brothers and no living parents) were informed of being taken into custody for the concerned offences. The police failed to send any intimation to the families.

Suresh was held in isolation, and his mother and lawyer were denied permission to see him in police custody as well as judicial custody. On April 28, on an application before the court, Suresh was admitted to a hospital where his mother was allowed to see him.

Q: According to the reports, police constables involved in the incident have been suspended. In the light of the data compiled by the National Human Rights Commission that states that disciplinary action has been taken only in 21 cases of custodial deaths out of the thousands of such cases recorded in the last five years, could you share your views on the glaring impunity in cases of custodial deaths and the need to hold senior officers accountable?

A: On April 21, the case was transferred to the Crime-Branch Crime Investigation Department [CB-CID]. Consequently, by an order on April 21, one sub-inspector and two constables present during the night of April 18 were suspended. Disturbingly, the Tamil Nadu Legislative Assembly was in session at the same time as the events took place. However, it was only on April 26 that the case was raised during the session.

“This represents unlawful collusion of the police, prison officials, medical professionals and jail officials, coupled with State support. Moreover, the alarming silence of the State Human Rights Commission, the National Commission for Scheduled Castes, the State Legal Services Authority, and the High Court (the Chief Justice of Madras High Court declined to address the matter suo moto) highlights that every institution is a party to the impunity.”

Besides the suspension of three police officials, no prosecution has been initiated, nor have any arrests been made or offences attached against any other police officials. No police officers have been held liable with regard to Section 2(d) (definition of ‘Human Rights’) of the Protection of Human Rights Act, 1933, for their negligence in furtherance of their acts amounting to human rights violations. This indicates the extent of impunity that is prevalent.

The impunity is not only by the police but is also contributed by the magistrate. The impunity continues to be enhanced and strengthened by officers of prisons and forensic doctors. This represents unlawful collusion of the police, prison officials, medical professionals and jail officials, coupled with State support. Moreover, the alarming silence of the State Human Rights Commission, the National Commission for Scheduled Castes, the State Legal Services Authority, and the High Court (the Chief Justice of Madras High Court declined to address the matter *suo moto*) highlights that every institution is a party to the impunity.

Q: You have mentioned non-compliance with clear High Court guidelines in the case of Santosh versus The District Collector (2020). Can you elaborate it in Vignesh’s context, and particularly on how the judicial magistrate and the dean of the medical college conducting the post-mortem are at fault?

A: As per the guidelines of Madras High Court, in this case, the kith and kin must be informed of the death and shown the body before the post-mortem. A copy of the post-mortem report and a video clipping of the entire post-mortem procedure must be issued to the legal heir on the same day when the post-mortem is conducted. The body is to be kept in the mortuary for 48 hours for the family to study it, giving the family an opportunity to consult the forensic expert of their choice, and a lawyer and to request a second post-mortem, if necessary.

In view of the above case, it is clear that the post-mortem could not have commenced without Vignesh's brother being given the chance to see the body as per the first guideline of the case. The family that was excluded throughout the process was now included in the jurisprudence of custodial justice where the post-mortem required the kith and kin to be a part of the process.

In Vignesh's case, the magistrate allowed only the elder brother to see the body where it was seen that the face was completely disfigured along with other bodily injuries. However, he was not allowed to capture any photographs of the body. The sub-inspector, who had previously offered bundles of cash, insisted on immediate cremation of the body. When the family insisted their culture follows burial, the burial was conducted abruptly, without any ceremony. Thus, the right to burial and the right to dignity of a body were violated. Until today, Vignesh's family has not been provided with a copy of the post-mortem report or a copy of the video.

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The guidelines of the Madras High Court were thrown to the wind by the magistrate. The entire police force and the hospital authority, including the dean and forensic doctors, blatantly acted in ignorance of the judgment.

Q: In light of the All India Anna Dravida Munnetra Kazhagam [AIADMK] demanding that compensation be raised from ten lakh rupees to 50 lakh rupees, can you enlighten us about the other necessary demands that should be put forward and implemented by the government in this case?

A: The least the government could do is inquire if the victim was a Dalit. Both the victims were beaten with reference to their caste. Even though the case was transferred to CB-CID, with regard to the offences by the police, the case is not registered under [Section 302](#) (punishment for murder) of the Indian Penal Code and the provisions of the [Scheduled Caste and Scheduled Tribe \(Prevention of Atrocities\)](#)

Act, 1989. With regard to the magistrate, the CB-CID has failed to attach Section 176 (inquiry by Magistrate into cause of death) of the CrPC. A notice will be issued to the CB-CID to include the above-mentioned sections, followed by a petition before the special court and the High Court in case of non-compliance.

In Paramveer Singh Saini versus Baljit Singh (2020), the Supreme Court directed CCTV cameras to function for 24 hours in all police stations as well as their rooms, verandas, and premises. The government must ensure that these directions of the Supreme Court are implemented in the state of Tamil Nadu. The legitimate statutory compensation of Rs. 12 lakhs under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, and all other rehabilitation measures mentioned under the Act must be provided to the families of Vignesh and Suresh. The State Human Rights Commission and the Commission for Scheduled Castes need to be proactive. The government must give an assurance of the establishment of the State Police Complaint Authority and District Police Complaint Authority in Tamil Nadu. The necessary protection must be provided to be witnesses, in compliance with the Witness Protection Scheme, 2018.

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Q: What according to you, is the way forward to end police brutality and atrocities so rampant in India?

A: The way forward is to ensure that the institutional mechanisms and bodies for oversight in the country are effective. Since most custodial death victims belong to Scheduled Tribes, the Muslim community, the Scheduled Castes, or other backward communities, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act must be implemented. There must be zero tolerance for torture in the state of Tamil Nadu and in the country.

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