



Custodial Torture- with reference to Constitutional Safeguards

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I. INTRODUCTION

India became a democratic country and adopted the Constitution of India with the Preamble which meant that there will be justice Social, Economical, and Political, Equality of the status and opportunity and to promote among them all Fraternity assuring the Dignity of the Individual.

The topic of custodial is relevant and important in the new millennium. Every day the news of Custodial Crime is one of the front line news in the National Newspapers, and it is necessary to examine the same in the concept of the Human Rights perception. The concept of the Human Rights is a worldwide one stretching over a Magna Carta of the 13th Century and continues up to the present century throughout the length and the breadth of the world. A new dimension has been added to the concept and it is now realized that the protection of Human Rights was not necessarily the concern of the people of different states where those rights were violated but that it was the concern the whole mankind to ensure the preservation and promotion of human rights in all parts of the world.

It is not necessary for the purpose of this article to indulge in salacious details of custodial crimes. But the problem exists and continues to grow despite the fact that it has been extensively discussed as a seminars, written about, been the subject matter of International Instruments,¹ The object of Inquiry commissions², the subject of recommendations of Law Commissions³, state provisions⁴, and judicial Directives⁵.

II. CUSTODY

The very idea of a human being in custody save for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulate custodial-cruelty- an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypercritical thinking.

III. ATTACKS ON HUMAN DIGNITY

The attack on human dignity can assume any form and manifest itself at any level. It is not merely the negative privilege of a crude merciless display of physical power by those who are cast in a role play of Police functioning.

¹ Universal Declaration of Human Rights, 1948, International Convention on Civil and Political Rights, 1966, Code of Conduct for Law Enforcement Officials, 1979 and UN Convention against torture and other cruel, inhuman or Degrading treatment or Punishment, 1984

² Report of the Commission of the Inquiry into the death of Sri U.Narashima in the Police, Custody at Sanjeeva Reddy Nagar Police Station, Hyderabad on 10.07.1986, 28 Govt. of Andhra Pradesh(1986)

³ 152nd Report of Law Commission of India-1994 on 'Custodial Crimes', 172nd Report of Law Commission on 'Review of Rape Laws' March-2000

⁴ Sec. 376 B, C, & D of IPC.; Sec. 114 A of the Evidence Act and Sec. 54, 163, 176 of the Cr.PC.

⁵ See for the example Raghbir Singh Vs. State of Haryana AIR 1980 S.C.1087, Sheela Barse Vs. State of Maharashtra 1983 (2) S.C.C. 96, Sunil Batra Vs. Delhi Administration and Ors. AIR 1978 S.C.1675.



The area of human dignity is in one's sacred self and that field is quite apart and distinct from the field of consideration of rights and duties, power and privileges, liberties and freedoms or rewards and punishments wherein the laws operate. If a person commits any wrong, undoubtedly he should be penalized or punished, but it is never necessary to humiliate him and maul his dignity as a human being.

IV. THE UNIVERSAL CONCERN

- i. The Universal Declaration of Human Rights, 1948, adopted and proclaimed by the General Assembly Resolution 217A(III) of 10th December, declared in the preamble that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article 1 proclaimed that all human beings are born free and equal in dignity and rights. In Article 3 it proclaimed that everyone has the right to life, liberty and security of person, in Article 5 no one shall be subject to or to cruel, inhuman or degrading treatment or punishment. The presumption of innocence of a person charged with a penal offence until proved guilty as contained in Article 11 (a) is meant to insulate him against any high-handed treatment by the authorities dealing with him in the matter..
- ii. Article 7 of the ICCPR⁶ adopted by the General Assembly resolution dated 16th December, 1966 covenanted that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Under Article 10 of the said covenant all persons of the deprived of the liberty shall be treated with humanity and with respect for the inherent dignity of the human person and the accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. The minimum guarantees to which everyone charged with a criminal offence, is entitled in full equality covenanted in Article 14(3) inter-alia, provide that no one shall be compelled to testify against himself or to confess guilt, which obviously will rule out use of force of any kind on a person accused of any kind.
- iii. Article 4(1) of the ACHR⁷, which came into force in July 1978, declares under that every person has the right to have his life respected and this right shall be protected by law. Under Article 5, the rights of every person to have his physical, mental, and moral integrity respected is recognized and it covenanted between the States who are parties to this convention that no one shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment and that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Right to human treatment recognised by Article 5 cannot be suspended even in time of war, public danger, or other emergency situation, as declared in Article 27 of this Convention.

V. THE CONSTITUTIONAL CONCERN

Respect for human dignity is thus not a matter for any deep study in axiology for an estimate of comparative values in ethical, social or an aesthetic problem but matter of acknowledging a simple truth already recognized by our national document when its opening chant exuded the cultural mobility of a fraternity that assures the dignity of the individual. The Constitution recognises it to be fundamental in the governance of the country that the state shall direct its policy to secure tyranny against mind and body and their freedom to grow fearlessly.

All custodial safeguards in the constitutional and other laws are meant to protect human dignity and shun barbaric approaches. This is why no person accused of any offence shall be compelled to be a witness against himself (Arti.20(3)), a person is entitled to know why he is arrested for being detained in a custody and to consult a legal practitioner of his choice (Arti.22(1)), there is prohibition in traffic in human beings and forced labour (Arti.23), and above all, that mother of all rights to protection of life and personal liberty (Arti.21).

The Right to live with human dignity is enshrined in Arti.21 derives its life and breath from the Directive Principle of State Policy particularly clause (e) and (f) of Article 39, 41 and 42 as held by the Supreme Court in *Bandhua Mukti Morcha Case*⁸. A confession to police officer cannot be proved as against a person accused of any offence⁹. Section 330 and 331 of the Indian Penal Code provide for punishment to one who voluntarily caused hurt to grievous hurt to extort the confession or any information which may lead to detection of an offence or misconduct. The expression "Life or personal Liberty" in Article 21 includes a guarantee against torture and assault even by the state and its functionaries to a person who is taken in custody and so sovereign immunity can be pleaded against the liability of the state arising due to such criminal use of force over the captive person. As held by the Supreme Court in *D.K Basu Vs State of W.B*¹⁰. "custodial torture" is a naked violation of human dignity and a degradation

⁶ International Covenant on Civil and Political Rights, 1966

⁷ The American Convention of Human Rights 1969

⁸ (1984) 3 SCC 161 & (1991) 4 SCC 417

⁹ Section 24 and 25 Evidence Act

¹⁰ (1997) 1 SCC 416



which destroys, to a very large extent human personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization is takes a step backward-flag of humanity must on each such occasion fly half-mast.

VI. THE APEX COURT'S CONCERN

The Apex Court through Judicial activism evolved a rights to compensation in cases of established unconstitutional deprivation of personal liberty or life. The 'Bhaghalpur bliding case was the first case where the question of monetary compensation was considered by the Hon'ble Supreme Court. In *Neelbati Behara Vs. State of Orissa*¹¹, it held, "advertising to the grant of relief to the heirs of victim of custodial death for the infraction or rights guaranteed under Article 21 of the Constitution of India.

Where serious allegations are levelled against the officers/officials of the police, it has been held by Supreme Court in *Mrs. Paramjit Kaur Vs State of Punjab*¹². That it would be in the interest of justice that the investigation is handed over to an independent authority. It is necessary install confidence in the mind of the public and do justice to the concerned parties¹³.

Other Case Law,

- i. *Ajabsingh & others Vs State of U.P*¹⁴
- ii. *Harikrishna and State of Haryana Vs. Sukhbir Singh*¹⁵
- iii. *Rudal shah Vs State of Bihar*¹⁶
- iv. *Saheli – A Women'a Resources Center and Ors. Vs Commissioner of Police, Delhi*¹⁷
- v. *Kartar singh Vs State of Punjab*¹⁸
- vi. *People's Union for Liberties Vs U.O.I*¹⁹
- vii. *Raghubir Singh Vs State of Hariyana*²⁰

VII. CONCLUSION

Custodial crime an insult to human dignity mean, any act which affects any aspect of Human Dignity and any person who commits an act which causes injury to any aspect of Human Dignity is a person committing custodial constitutional crime.

The person who custodial constitutional crime under toxication of power have been dealt with by the Constitutional Court but at the same time it deserves an in-depth consideration by legislature as well, a task which they have forgotten. It is only the Hon'ble Supreme Court and High Court which have come forward and taken action and awarded compensation to the victims, but effective law is required by the Parliament to be legislated to prevent the menace of different kind insult to human dignity. The person who custodial constitutional crime under toxication of power have been dealt with by the Constitutional Court but at the same time it deserves an in-depth consideration by legislature as well, a task which they have forgotten. It is only the Hon'ble Supreme Court and High Court which have come forward and taken action and awarded compensation to the victims, but effective law is required by the Parliament to be legislated to prevent the menace of different kind insult to human dignity.

As indicated by the report of the Asian Centre for Human Rights (ACHR), *Torment in India 2011*, the National Human Rights Commission (NHRC) recorded a sum of 14,231 deaths in custody in India between 2001 and 2010, which incorporates around 1,504 deaths in police authority and around 12,727 deaths in Judicial custody. The ACHR report observed that these are the cases that have been reported to the NHRC, and do not include all instances of custodial deaths. The report attributes the deaths in police authority to torture, dissent or denial of therapeutic/medical facilities and cruel prison conditions.

¹¹ AIR 1993 S.C 1960

¹² JT 1995 (8) S.C.418

¹³ *Inder Singh Vs. State of Punjab* AIR 1995 S.C 312 *Kashmeri Devi Vs Delhi Administration* AIR 1988 S.C 1323

¹⁴ 2000 (3) SCC 521

¹⁵ AIR 1988 S.C 2127

¹⁶ 1983 (3) SCR 508

¹⁷ 1990 (1) SCC 422

¹⁸ 1994 (3) SCC 569

¹⁹ 2006 Cr.L.J 3627 (SC)

²⁰ 2006 Cr.L.J 2912 (SC)



We must implement a just and humane tool to reform the crime, offender, abandon the obsessive superstition that State ruthlessness will sharpen the savage into a social part and offer new achievement in crime control, consonant with human rights and remedial curial compassion.

Moreover, there is a provision in the Criminal Procedure Code, 1973 relating to cases of unnatural and suspicious deaths. According to it, an officer in charge of a police station and other police officers specially empowered on this behalf are required by Section 174 to conduct an investigation into cases of suicides and other unnatural or suspicious deaths in the station, and report it to the District Magistrate or the Sub-Divisional Magistrate. Section 175 empowers such police officers to summon persons for the purposes of such an investigation.

The provisions of Section 174 and 175 afford a complete and autonomous code in itself for the purposes of inquiries in cases of accidental or suspicious deaths. Thus, sections 174, 175, 176 of the code deal with inquiries into suicide or inquiries into sudden, violent or unnatural deaths. Section 174 provides for such inquiries by the police, Section 176, by Magistrates. It must be borne in mind that a police officer making an inquiry under this section cannot order the exhumation of a human body but a Magistrate can do so under section 176. Also, section 175 must be read in conjunction with section 174 of the Code of Criminal Procedure, 1973.

The object of the inquest proceedings is merely to ascertain whether a person has died under unnatural circumstances or an unnatural death and if so, what the cause of death is. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit of scope of the proceedings under section 174 of the Criminal Procedure Code, 1973. The name of the assailants and the manner of assault are not required to be mentioned in the inquest report. The purpose of preparing the inquest report is for making a note in regard to the identification marks of the accused.

Custodial violence, incorporating torment and death in lockup, strike a blow at the rule of law, which demand that the powers of the executive must not only be derived from the law but that the same ought to be restricted by law. It is in this manner, for the government and the lawmaking body to give a genuine thought to their commendation of the Law Commission and National Human Rights Commission and realize suitable change in the law both to curb custodial offences and additionally to ensure that the offenders are punished.

Custodial deaths are a threat, and a dark spot upon the Indian Society. The need of the hour is to impart an outlook, not just in the government's reasoning, but also in the general public's thought process, against the notion of custodial violence that eventually leads to death. The enforcing authorities should be made aware and held accountable for their actions, and the general public must be made aware of the methods, strategies and avenues accessible to them in the wake of such happenings. Obviously, before such a stage is reached, the government itself needs to verify that it has a well-suited framework set up which is competent to adapt up to pressures like 'custodial deaths'.

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