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CUSTODIAL VIOLENCE AND TORCHER IN INDIA

In our Indian society, even educated people either ignore or avoid various topics of utmost importance and in short span of time such ignorance turn out to be friendly acceptance; too people start taking such things as normal. For instance, Indian cinema movies like: Dabangg 3, Rowdy Rathore, Shahid, and Simmba; I would like to put a question, that according to you what was common thing in all these movies, let me tell you – “Police torture”. Yes, you read right! According to an official report whenever lead actor performs violent activity or fake encounter, they get automatically encouraged and promoted by viewers i.e. our very own society. An average viewer believes that, Police instead of following law and order should catch wrongdoer and finish them without any legal proceeding.

The best way to understand anything is via material related questionnaire; this has been said by one of the greatest man in legal field himself i.e. Mr. Ram Jethmalani. So, I am trying this too to make my reader more aware of the given material.

Firstly, what does this term Custodial Violence states? I must tell you first that what does the term “custody” means, apprehending someone for preservative care. In case, you are in charge of a room with some kids and you find acts of one of those kids dangerous to other kids then you’ll want to tie arms of that kid or make him accept his mistake and make him sit away from other kids. So, this is the reason behind arresting the suspect of a crime, to save other people in the society by disconnecting wrongdoers from their very own society. The words "custody" and "arrest" are not alike. It’s true that in every arrest there is custody but vice versa is not true. To make this happen actual seizure or touch of a person's body with a view to arresting is necessary. Arrest, remand and bail are three main components related to investigation. Arrest directly reduces personal liberty of an individual. Therefore, several a times’ unwarranted arrests have reached courts of law. That’s the reason why there have been occasions when unlawful detention has been considered as a violation of fundamental right and compensation thereof has been paid. There are also several provisions which incorporate safeguards for illegal arrest. If the method of arrest is not performed as prescribed by Section 46; as mentioned above, the arrest would be worthless.

Secondly, what is the Police Custody? To answer this I would like to mention that when following to the receipt of a complaint or of report by police about a crime, and Police officer arrests the suspect involved in the crime reported, to prevent him from committing the offensive acts in future, same officer brings that suspect to police station, then it is called Police Custody. It is actually the custody of a suspect in a jail at the police station, to detain the suspect.

Thirdly, what is the meaning of Judicial Custody? Police Custody means that police has the physical custody of the accused on the contrary Judicial Custody states that an accused is in the custody of the concerned Magistrate. In former, the accused is presented in police station lockup while in latter, it is the jail. When Police takes a person into custody, the Cr.P.C gets started and they were produced him/her before a Magistrate within 24 hours of the arrest.

Fourthly, what is the difference between Police Custody and Judicial Custody in Criminal Procedure code? And how long can an accused be detained under police or Judicial Custody? When an accused of a cognizable offence is arrested and detained by the police and produced within 24 hours (excluding travelling time from the place of arrest), or he himself surrenders before the nearest Magistrate. Then the Magistrate can either release him on bail or he can send him to judicial custody or to police custody, it's totally a choice of the said Magistrate.

LAWS RELATED TO CUSTODY IN INDIA:

The provisions for holding a person in custody for purpose of further investigation, in India are governed by Section 167 of the Code of Criminal Procedure. Section 167 states that a person may be held in the custody of the police for a period of fifteen days on the orders of a Magistrate. A Judicial Magistrate may remand a person to any form of custody extending up to fifteen days and an executive magistrate may order for a period of custody extending up to seven days. Police custody may extend only up to a period of fifteen days from the date custody begins but judicial custody may extend to a period of ninety days for a crime which require a punishment of death, life imprisonment or period of imprisonment exceeding ten years and sixty days for all other crimes if the Magistrate is convinced that sufficient reasons exists, following which the accused or suspect must be released on bail.

Not only in India but also many developed countries like USA promote such piece of legal nuisance. **Case of George Floyd, 46-year-old**, a year has passed since - an unarmed African American man - was murdered during an arrest by white officer Derek Chauvin. His death resulted in huge protest after which; US party i.e. Congress has introduced a police reform bill and along with this it is discussed to maintain a National Database which will register all police misconducts. Will this bill turn into a law, time will tell us about this. But do you know same Anti -torture Bill was discussed in India also it was 10 years before; it is been discussed in parliament so many times but not passed yet.

Globally it was discussed by United Nations in 1975. India is a member of UN, so if any law of UN has to be applied in India, then we have to make a law by the parliament. **So, making UN convention against torture 1975, a bill was presented in Lok Sabha in 2010 named- Prevention of Torture Bill 2010**, so
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according to this bill if any public servant commits a torture then punishment has prescribed against him. This will explain the word “torture” very broadly and simply and says that if any public servant tortures any individual for deriving any information or his confession, if he hurts that individual grievously or tortures his life, limb mentally or physically then all these things will be considered as torture and Against this act there is a punishment of 10 years.

After being passed by Lok Sabha it comes to Rajya Sabha and for further consideration it passes the bill to Rajya Sabha Select Committee Suggestions. Committee provides some suggestions for the bill and says the points like that definition of torture should be expanded secondly if any woman or child has been tortured then the punishment should be more strict and thirdly they suggested to set up an Independent Authority which can investigate all the activities and provide all the needed compensation to the victims. After including all the suggestions this Bill was presented repeated times in Rajya Sabha but till now this bill has to been passed by Rajya Sabha yet. In 2017 Law Commission; said that they are seriously considering about the bill but before passing the bill there should be changes done in Indian Penal Code, Indian Evidence Act and Criminal Procedure Act, this all seems like a tough work shall I tell one more big thing that , **In 2019 there were 1700 Custodial Death.**

Now let's know what the major judgments are given by Supreme Court against the Police Torture and Violence in various important cases:

RELATED CASE STUDY:

FIRST CASE: Rudul shah v/s State of Bihar 1983, In this case petitioner Rudul Shah was kept illegally in jail for 14 years. Habeas Corpus Writ was filed and his immediate release was demanded this case is important because for the very first time Supreme Court realised that if by any statement any individuals constitutional rights is being violated then the individual will get compensation.

SECOND CASE: Saheli Vs Commissioner of Police 1989, In this case police along with zamindar misbehaves with the rented mother and her nine year old child due to whom the nine year old child dies and Supreme Court compensated the mother by awarding 75000 Rs. This case is important because Supreme Court gave option to Delhi administration to recover the amount by the police officer who is responsible for the incident.

THIRD CASE: Nilabati Behera Vs state of Orissa, 1993, In this case Suman Behera was arrested by police and the very next day her body was found on railway track with multiple injuries. In this case petitioner was awarded by a compensation of Rs 155000.

¹So, in the last two cases we got to know that while awarding compensation Supreme Court doesn't follow any specific criteria. According to the situation of the case the compensation is decided but in this case Supreme Court said that it is a states responsibility to give compensation not police officer's.

¹ 1. An Article from 'The Hindu' and summary of Papers written by judicial officers on the subjects: "Law relating to Arrest, Remand and Bail" by TK Jagdale and group member Gadchiroli.

2. Essential judicial rulings for police officers (Published by Maharashtra Police Academy, Nasik).

FOURTH CASE: Joginder Singh Vs state of Uttar Pradesh, 1994, In this case Supreme Court said that if any arrest is done without any justification then it will be an illegal act. Supreme Court said that Police officers has the power to arrest but just so using this power they can arrest i.e. there must be a reasonable justification for arresting someone.

Now, I will be highlighting the **most important case of custodial violence i.e. DK Basu Vs state of Bengal, 1997**, in this case Supreme court recognised custodial violence and police torture and said custodial violence is an attack on human dignity. Thus, in this case Court said that after having many recommendations and policies still the cases of torture and deaths in police custody are increasing. So, in that case total 11 guidelines were given which every police officer has to follow while arresting someone; these guidelines and rights are available to every arrested person in the country.

Therefore, these are the various important guidelines let down by the Supreme Court:

- 1. The police personnel should carry clear identification and name tags with their designation**, simply it means that whichever police person is handling the interrogation or arrest they should clearly carry their name tag in which their name and designation must be seen clearly and police has to maintain a register of those officials who are handling the case or interrogation.
- 2. Arrest Memo** ; if any police officer is arresting someone they has to maintain an arrest memo in which all the details related to arrest should be there. Like the signature of any witness person, time, date and place of arrest.
- 3. Other person known about his arrest**, it means that the arrested person's relative or friend must be informed about the arrest of the person and where he has been detained this also should be informed and they have to maintain an official diary in which all the records has to be mentioned. Like, which officer is handling the case, who has been informed, like these things should be mentioned in that diary.
- 4. Inspection Memo**; in this if the arrestee has any major or minor injuries then it should be noted down. Inspection memo would be signed by both officer and arrestee and arrestee will get a copy of inspection memo.
- 5. Medical examination**; in this after the arrest of the person he should medically examined in every 48 hours.
- 6. Copies to Magistrate**; all these above mentioned documents i.e. medical report, inspection memo, arrest memo, the copy of all these documents will send to the magistrate for their records.
- 7. Consult Lawyer**; while at the time of interrogation arrested person can meet his lawyer.
- 8. Police Control Room**; there should be a police control room in every district and state headquarter; in which all the information related to the arrest they would receive within 12 hours of the arrest and police control room board will display all these information. So, In Sheela Barse Vs state of Maharashtra and Dk

3. www.Live.law.in.

4. Laws of Custody in India: - An analysis of Section 167 of Code of Criminal Procedure by Hariharan Kumar.

Basu Vs state of West Bengal after the guidelines given on the basis of these cases then also the cases of custodial violence is still rises.

Lastly, not only torture but any punishment also needs a reasonable justification. Police and civilian need to share a healthy relationship which never going to be established by fear factors. Use of power against powerless is never going to be an equal playground; therefore there is a need of balance of power by judicial or legislative intervening.



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