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CUSTODIAL TORTURE IN POLICE STATION IN INDIA

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Abstract: The police officers who are responsible as the custodian and guardian of law, have acted in just the contrary manner and have failed to protect the rights to live and liberty of the citizen guaranteed by article 21 of the constitution. Custodial violence is a matter of concern. It is committed under the shield of uniforms and within four walls of police station or lock up the victim being totally helpless. Custodial torture or death is perhaps one of the worst crimes in the civilized society governed by the rule of law.

Key words: violation of fundamental rights, custodial death, custodial torture, necessity evil, indiscriminate arrest

INTRODUCTION:

The police personnel are public servants and not master, so they should be educated to keep that thing in mind. If still the violation of law take place then proper action should be taken against the erring officials as well as he should be bear the burden of compensation in those case where the state in made liable to pay compensation by the court. The Indian judiciary enjoy vast power in rendering justice to the people and when ever any case of violation of fundamental rights (arise) as a result of police has been brought before court, it has always takes a serious note of it. Police custodial torture death has become a common phenomenon and a routine police system of interrogation these days. The custodial torture or death is a blatant violation of fundamental right to life as guaranteed by Art. 21 of Indian constitution, compensation has been considered as an appropriate relief in such incidents. The important leading case of Nelabati Behra Vs State of Orrisa¹ may be cited to illustrate this issue. In the custodial death the Supreme Court treated the letter of one Nelabati Behra as a writ petition under Article 32 of the Constitution, where in petitioner had claimed compensation for death of her son Suman Behra aged 12 years in police custody in district Sundergarh in Orrissa. The state Govt. of Orrissa on behalf of police contended that the deceased had escaped from police custody and was run over by a train while being chased By the police officials. Hence it was not a case of custodial death. The Government also raised another plea of sovereign immunity. The Supreme Court rejected both the plea of the respondents and held that defense of sovereign immunity is not available in case of constitutional remedy and there was no evidence that the death of deceased was accidental. The court awarded Rs. 15000 as compensation to the deceased's mother.

The term "torture" with reference to police custody implies infliction of severe pain or suffering, whether physical or mental, intentionally for the purpose of extracting from the person who is in police custody or a third

person or confession or coercing or a third person to divulge the truth. There can be no meaningful discussion on the subject of custodial torture without a proper understanding of the meaning of "police & torture. The term police are derived from the Greek word Politela or its latin equivalent Politia. The term Politia, which stand for state administration the police can notes a body of civil servants whose primary duties are preservation of order, prevention and detection of crime and enforcement of law. According Ernest Fround, police function generally relate to promoting public welfare by restraining and regulating the use of property and liberty of person². According to the Cambridge International Dictionary of English the word police means the official organization that is responsible for protecting people and properly, making people obey the law finding out about the solving crime and catching people who have committed a crime.

The word torture usually denotes intense suffering physical mental and psychological aimed at forcing someone to do or say something against his/ her will it is important to recognize the concept of torture generally used by the police in Indian. The report about the torture of political prisoners in India submitted before the sub – committee in International Relation, as US House of representative in March 1976 is birth. The following kinds of physical torture are mentioned in this report.

1. To stamping on the bare body with heeled boots.
2. To beating with the canes on the bare soles of feet.
3. To rolling a heavy stick on the shins, with a police man sitting on it.
4. Making the crouch for hours in a "Z" position.
5. Beating with rifle butt.
6. Slapping with cupped hands on both ears until the victims bleeds and losses consciousness.
7. Inserting live electric wires in the body crevices.
8. Forcibly laying nude on the slabs.

9. Burning with lighted cigarettes & candle flame.
10. To denying food water and sleep and then forcing the victim to drink his own excreta.
11. Stripping the victims, blackening his face and parading him in public.
12. Hauling his aero plane, victims hands tied behind the back with long rope, the end hauled over a pulley, leaving the victim dangling in mid air swinging.

Beside the above methods of torture there are certain other forms of brutalities and atrocities committed by Indian Police. The police official justifies custodial torture as a “necessity evil” to keep growing crime – rate under control. They justify and support use of violence and third degree method against apprehended criminals on the following grounds

- A. Professional and hardened criminals understand the language of violence only they would not tell the truth unless sternly dealt with.
- B. When the police deal with criminals politely and gently, no one would ever be prosecuted for his crime. Thus, from the practical point of view, rough and tough treatment with the criminal is inevitable.
- C. To lack of public co operation frustrates the cause of police investigation and people are unwilling to give evidence against the criminals. Therefore police has to resort to self help for eliciting information about the crime from the criminal by using third degree methods if the arrested person is stubborn and adamant in not divulging out of the truth.
- D. Very often common people also expects the police to give a sound thrusting to anti - social elements and bad character. The most glaring example of custodial torture with the local public support behind it, is the famous Bhagalpur blinding episode in 1980 when the suspects in police custody were blinded by puncturing their eye – balls³
- E. When these criminals have no respect and regard for the rights of innocent persons i.e. victims, why should the police respect the rights.

The tendency of custodial torture use by the police official the Supreme Court observed in the case of Gouri Shankar Sharma Vs. State of UP⁴ It is generally difficult in case of death in police custody to secure evidence against police man responsible for resorting to third degree methods since they are in charge of police station records which they do not find difficult to manipulate. It is only in few case that some direct evidence is available Sheela Barse Vs. State of Maharastra the supreme court regarding custodial investigation inter aila observed.⁵

Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be known to the arrested person that he is entitled to apply for bail – whenever a person is arrested by the police and taken to the lock-up, the police will immediately give intimation of the fact of such arrest to the nearest legal and committee and such Legal Aid committee will take immediate steps for the purpose of providing legal assistance to the arrest person at state level cost provided he is willing to accept such legal

assistance. Further court said that the nearest relative or friend of the arrested person should be also be immediately informed about such arrest in Saheli Vs. commissioner of Police⁵ a writ petition was filed by the women civil rights organization called SAHELI under Art. 32 on behalf of the deceased's mother for recovering of compensation consequent to death of her 9 years old child caused in custody of Anand Prabhat Police station in Delhi the court awarded compensation of Rs. 75000 to the mother.

The case of Joginder kumar Vs. State of UP and other⁶ is also another incident of indiscriminate arrest and wrongful use of arrest power by the police. In this case a young lawyer was called to the police office of the senior superintendent of Police (SSP), Ghaziabad in connection with “same enquiry. He was accompanied by friends and his brothers, who were told by the police that he would be released in the evening Joginder Kumar was taken to police station with the assurance that he would be released next day. But Joginder was not released as the police allegedly wanted his help in making “ further injuries” when his family went to the police station on the third day, they found that he had been taken to an undisclosed location. Thus he was illegally detained by police for more than five days. In this case the Supreme Court laid down the guideline for arrest by police which are as follows.

- A. Arrests are not to be made in a routine manner. The officer making the arrest must be able to justify its necessity on the base of preliminary investigation.
- B. An arrest person should be informed the ground of his arrest and allowed to inform his friends or relatives about the same. An entry in the police diary about the arrest and the persons who were informed about the arrest must be made by the police officer at the police station.
- C. The magistrate concerned must satisfy that the above requirements have been complied with by the police.

The Supreme Court took a serious view of police custodial death in Dilip Singh vs. State of Haryana⁷. In the case two constables along with a sub – inspector of Kurukshetra distt. Were found guilty of causing death of the accused by beating and convicted them under section 304 (1) IPC, i.e. for causing death by negligence yet another news regarding of custodial death⁸ the SC not only directed Home Secretary of Punjab to suspended the guilty sub – inspector but also ordered CBI to conduct an inquiry in to the case. In this case an innocent person, sarbjeet, was picked up by the police, detained for several days and finally gunned down near the Indo – Pak border. It was latter as found that the deceased had nothing to do with terrorist activities and was innocent

The cases involving police torture, the Supreme Court held in Munshi Singh Gautam & others Vs. State of Madhya Pradesh⁹ reiterated that courts should exhibit more sensitivity and adopt realistic rather than narrow technical approach to the problem. This case related death in police custody due to beating by police official in order to extract confession Justice Arijit pasayat quoting Abraham Lincoln views in this case and observed with reference to police. “If you once forfeit the confidence of our fellows' citizens you

can never regain their respect and esteem. It is true that you can fool some of the people all the time, but you cannot fool all the people all the time. While deprecating custodial torture by police, the Supreme Court had made similar observation in the previous decision in Sakila Abdul Guffar Khan Vs. Vasant Singh Raghunath dDhoble¹⁰ and Raghuvir Singh Vs State of Harayan case¹¹.

In its historic decision in DK Basu Vs. State of West Bengal, the High Court of Calcutta laid down the basic norms to be followed by State Govt. of West Bengal in order to Prevent, check and monitor custodial violence.

The custodial violence and torture involve serious breach of Human Rights, the Govt. Of India finally came out with the protection of Human Rights Act 1993 with the views to preventing human right violation and combating torture case. The Commission has issued instructions and held meeting of Distt. Magistrate and police superintend from time to time to initiate adequate measures to prevent custodial torture and protect the innocent people from the violation of their basic (norms) or rights

In almost every State there is an increase in frequency of death in custody generally prescribed by News Papers, TV channel as lock up death. News papers almost every day's carries report of assault, torture, rape and death of person in police custody. Thus at present time torture is not exception, but the norms in police custody as well as prisons or jail.

To Asian center for Human Right reports "Torture in India 2011" stated that a total of 14,231 persons, or an average of more than 4 persons per day, died in Police and Judicial Custody in India between 2010 to 2011.

CONCLUSION:-

It is true that the Police Officer has contributed towards the maintenance of public order and their plans are also enforced with purity, activity, vigilance and description. But some police official have been abused and condemned for torturing the public, particularly those who are in custody and detained, and inflicting injury to their life and Property. The incidents of custodial torture and subsequent death have raised the eye brows of critic Indian Judicial system. The News regarding custodial torture often hit the headlines of News Papers. Human right commission must consider the case of custodial torture by police mere effectively and handle the tangled web facts circumstances and the situation mere realistically. It is only with the corporation of both the police and public that we can gave become a strong and healthy democracy, where the violation of Human Rights may become the things.

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