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## SANCTITY OF USE OF THIRD DEGREE TORTURE DURING INVESTIGATION

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**Abstract:-**The concept of rule of law, due process of law and natural justice necessitate that all crimes should be registered promptly and they should be investigated impartially and competently. Police station is the prime centre for the registration of crime and officers over there have legal power and prescribed duties to investigate the crime. Various provision of CrPC and other enactments empower police to investigate the crime to their legal and logical conclusion. Police are empowered to investigate offences both cognizable and non cognizable. The cognizable offences can be investigated by police ipso facto but for investigation non cognizable offences they have to obtain permission from appropriate authority.

**Keywords:** Sanctity , crime and officers , line of humanity .

### INTRODUCTION

In carrying out this work police have a great deal of discretion. The police are trained to crack the cases of crime by just holding onto a thread of clue. Based on that clue they investigate and apprehend real criminals. During investigation they are supposed to keep peace, which requires sensitivity and common sense rather than torture and legalistic intervention. Police personnel have to collect all the evidences from the crime scene and link all to them for coming to a conclusion. He also has to collect circumstantial evidence and arrest suspected person in order to investigate from them. Police personnel suffers from various pressure for solving a case and under this pressure when he is able to arrest a link from the crime then it becomes important to obtain information or confession from him. But when this investigation crosses the line of humanity it becomes torture/third degree to the suspect. Use of torture or third degree can be discussed in subsequent sections.

As we mentioned earlier that torture or use of third degree during investigation is often done for obtaining information, confession or creating fear or terror in the mind of criminals. Use of third during investigation is an international problem. According to Amnesty International, more than 100 countries in the world are using torture for investigation crime. What do we mean by torture or third degree?

According to Art 1 of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, defines torture as:

“Torture is any act by which severe pain and suffering, whether physical or mental, intentionally inflicted upon a person for such purposes as obtaining from him or third person information or confession...”

Although there is no exhaustive list of torture or use of third degree, but it generally includes beating, electric shock, stretching, submersion, suffocation, burns, rape & sexual assault. Use of third degree/ torture by police remains widespread systematic practice in India. Before proceeding further, if we take a look on the past 10 year of NCRB report, this number is increasing year by year. This can be shown as per the following data:

Year	Cases of Torture Reported
2000-2001	127
2001-2002	165
2002-2003	183
2003-2004	162
2004-2005	136
2005-2006	139
2006-2007	119
2007-2008	187
2008-2009	127
2009-2010	124
2010-2011	147

Source: National crime Report Bureau of India'2011

It is an area of great concern that despite of all the guidelines of the Hon'ble Supreme Court and our constitutional safeguards, why we are still using inhuman methods for getting truth. Before discussing about the constitutional safeguard, we would like to give some recent cases of torture or third degree.

#### CASES OF TORTURE:

- 1.On April 12, 2011, Mr Viji Parmar (45 years) died due to alleged torture at Tajada Police station in Bhavnagar district of Gujrat
- 2.On 27, Oct 2011 Balister (40 years) died in police station in Jhansi. His relative alleged that he died because of torture.
- 3.On 29, January 2012 Aftab Alam (27 year) died due to alleged torture at Atari police station, Gaya district, Bihar.
- 4.In April, 2013 brutal case came from Muzaffarnagar district of UP in which acid was inserted in his body during investigation.
- 5.Most recent and brutal case is from Jamui district of Bihar in which police personnel inserted petrol and chili powder in the private parts of accused, resulting to his death.

#### LEGAL FRAMEWORK:

Using third degree or torture during investigation is not only against the ethics but also against the basic human rights. Use of torture or third degree is prohibited in many international law as well as national laws also. Art 21 of Indian constitution states that "No one should be deprived of life and his personal liberty except according to procedure established by law." Art 22 of the constitution guarantees protection against arrest and detention and declare that no person who is arrested shall be detained in custody without being informed of grounds of such arrest. Again art 22(2) states that person arrested and detained in police custody should be produced before magistrate within 24 hour. Apart from constitutional safeguard Sec 50 of CrPC gives right to the individual to know about the grounds of his arrest.

In spite of constitutional and other provision for safeguarding the life and liberty of public, growing incidence of torture and death in police custody is a disturbing factor. The increasing incidents of torture and death in custody have assumed such alarming position that it is affecting the creditability of rule of law and criminal justice system. In the case of Nilabati Behara v. state of Orissa , the Supreme Court of India has held that " It is axiomatic that convicts, prisoners or under trial are not denied their right guaranteed under Constitution of India...the precious right

guaranteed under art 21 of the constitution cannot be denied to convicts, under trial or person in custody...”

In order to check the custodial investigation, the Hon’ble Supreme Court laid down 12 guidelines in D.K Basu v. State of West Bengal . In the same case Supreme Court held that “custodial death or torture is one of the worst crimes of civilized society which is governed by rule of law.”

If we take a look on the international scenario there are many treaties and convention which stands against the torture or use of third degree. Such as Art 5 of universal Declaration of Human Rights and Art 7 of international Covenant on Civil & Political Rights states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment...”.United nation has enacted a separate convention against torture named as “United nation Convention on Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.” There is other convention also which prohibit torture in any form.

In concluding lines, Police is no doubt under a legal duty and have legitimate right to arrest a criminal and to interrogate him during the investigation of a crime, but it must be remembered as the law does not permit use of third degree method or torture of accused in custody during interrogation and investigation with a view to solve the crime. The interrogation and investigation into a crime should be in true sense purposeful to make investigation effective. By torturing a person and using third degree method the police will be accomplishing behind the closed doors what the demand of our legal order forbid. No democratic society can permit it. As the Supreme Court mentioned in its judgment said that “when protector becomes predator, civilized society ceased to exist.”

Attention is required to develop properly a work culture and training to be consistent with the basic human values. Scientific method of investigation is required to be introduced. A balance approach is needed to meet the end of justice and to meet endeavor.

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1. (1993)2 SCC 746
  - 2.(1997)1 SCC 416
  - 3.Supreme court’2010

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