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GRT A BRIEF OVERVIEW OF THE STATUTORY AND JUDICIAL MEASURES AGAINST CUSTODIAL VIOLENCE IN INDIA

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Abstract:The police in India have to perform a difficult and delicate task in view of the deteriorating law and order situation. The primary duty of Police is to uphold law and order and protect the citizen but they resort to illegal abduction, torture and assassination in custody and did not record and investigate complaints in this behalf for long periods of time, if those who had been abducted are found to have been unlawfully detained in police stations in the State concerned prior to their probable assassination. Despite having statutory provisions and stringent court guidelines from time to time, still a few members of police force betray respect for life and liberty of innocent citizens. The present paper will analyze the nature and extent of custodial violence along with the statutory and judicial measures.

Key words:Custodial Violence, Third Degree, Torture, Constitution, Human Rights.

INTRODUCTION :

The term Custodial crime has not been defined anywhere in the Constitution or in other Penal Laws. It is taken to mean as use of third degree or torture in police custody. The torture in the police custody has been accounted as a gross and deliberate violation of human dignity. Custodial violence is a widespread manifestation of imperialistic tendencies of police personnel's and routine abuse of power also. It has not confined to India only but a concern of the global community because the nature and extent of the problem is universal.⁴ But the incidents of custodial violence are much more in developing countries like India whereby the torture in police custody seems to be legalized. The use of third degree methods in police custody and even death of the victim being totally helped less in lock-ups are frequent under the opaque shadow of law and "shield of uniform". This inhuman act degrades the dignity of the victims and to a very large extent, destroys the individual personality as well.

MEANING AND DEFINITION

The word 'torture' has been defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or

suffering arising only from, inherent in or incidental to lawful sanctions."

The arrested persons, the under trials and sentenced persons are treated in subhuman conditions and even having a right to know for which offence (s) he or she has been detained, the detaining authorities frequently breach this right.

NATURE AND TYPES OF CUSTODIAL CRIMES

The methods of torture adopted by government officers involve gross forms of inhumanity [The UNITED NATION'S SPECIAL RAPPORTEUR ON TORTURE, reported the torture as "routine police practice of interrogation" in India]. In recent years, third degree torture and custodial deaths have become an intrinsic part of police investigations and the injury inflicted on the prisoners is sometimes unbearable. No doubt, the police system have contributed a lot towards the maintenance of public order but more often that, the police officers have been found abusing their powers, particularly against those who are in custody and detention. Consequently, the credibility of the rule of law and administration of the criminal justice system has been adversely affected.

Torture may result in following forms: Sustaining Electric Shocks, use of lathis/pattas, burning of body parts with flames, thrashing private body parts, denying food/water for days, raping or assaulting the accused, ignoring medical aid required by him.⁹

The following types of crimes committed by the police officers can be understood as:

- Custodial torture including deaths
- Illegal arrest and detention

Rape in police custody
Unnecessary harassment and atrocities

Custodial Torture including Deaths

Deaths in police custody are one of the worst crimes in a society which is governed by the Rule of Law. At many instances, the police officers who are regarded as the custodian and guardian of law, under the disguise of their power and authority used to inflict harassment and torture (resulting in deaths/ incitement to suicide also. They used to do so to extract information from them or to force them to make confessions of their committing the offence (sometimes against their will). In case of custodial death of the victim, the evidences are fabricated in order to prevent prosecution to support the view that the arrested person died after his release from detention. Deaths are not usually registered in the police records as the police officers, if, however, any FIR is to be lodged then no direct evidence is to be available to the victim or his relative in order to substantiate the charge due to the fear exhibited on the fellow prisoners.

Illegal Arrest and Detention

Despite having the Constitutional safeguards, the arbitrary and illegal arrest and detentions by the police are on rise under the TERRORIST AND DISRUPTIVE ACTIVITIES ACT AND MAHARASHTRA CONTROL OF ORGANISED CRIME ACT. The police have failed to realize the importance of the doctrine of 'Law enforcers should not be its enforcers' by failing to strike a balance between the rights of the people as guaranteed under the Constitution and their duties towards the person kept in custody or detained. Records of detention are not adequately maintained and relatives of accused have very limited access to judicial remedies. The police have also been forced to refrain from acting as a true enforcement officer of the State due to the existence of considerable political influence over them.

Rape in Police custody

The rape of persons (particularly women) in police custody is a part of torture. A higher incidence of abuse appeared credible, given other evidence of abusive behavior by police, and the likelihood that many rapes went unreported due to the victims' shame and fear of retribution. According to 2002 records from the National Crime Records Bureau (NCRB), the latest available, courts tried 132 policemen for custodial rape, but only 4 were convicted. The Ministry of Defense reported that it filed 17 rape cases and 10 murder cases against army personnel from 2003-2004. To date, one rape case and five murder cases ended in guilty verdicts. In the remaining cases, the investigations remained ongoing or the charges were proved false.

Unnecessary Harassment and Atrocities

This also covers an act of a police officer in a manner, which is against the procedures and rules recognized and enforced by the Courts. Whenever a complaint is instituted against the police officer for committing torture in police custody or detention, for the victim, it is very difficult

to secure evidence in order to prove the fact against that police officer.

Measures for Curbing Custodial Crimes Violence

The arrested persons, the under trials and sentenced persons are treated in subhuman conditions and even having a right to know for which offence (s) he or she has been detained, the detaining authorities frequently breach this right. The measure against custodial violence may be understood in statutory and judicial perspective which are as follows-

Statutory Measures

The jurisprudence of Articles 19 to 22, 32 and 226 of the Constitution provides safeguards against police torture. The provisions under CRIMINAL PROCEDURE CODE AND THE INDIAN PENAL CODE¹⁶ aimed at safeguarding personal liberty and life of a citizen. The CRIMINAL PROCEDURE CODE fortifies procedures by providing more safeguards under SECTION 163; SECTION 164 empowers an appropriate magistrate to record any confession of statement in the course of the investigation. CHAPTER V OF THE CODE OF CRIMINAL PROCEDURE, 1973 deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. The guilty policeman can also be booked under the other provisions of the IPC like murder, giving false evidence of fabricating false evidence to procure conviction. There are punitive procedures both administrative and judicial in case of complaints of custodial violence against police officer. INDIAN EVIDENCE ACT prohibits use of confession made before the police officer and the one obtained through inducement, threat of promise in criminal trials. The Police Act 1861 empowers the higher police officers to "dismiss, suspend or reduce any officer of the subordinate ranks whom they shall think remiss or negligent in discharge of his duty or unfit for the same." Lesser punishments can also be awarded. This Act provides that any police officer violating the rules and regulations including any police officer who shall offer any unwarrantable personal violence to any person in his custody shall be punished with three months' rigorous imprisonment. All this has meant nothing in practice. The Criminal Law amendments of 2008 tended to place some limits on the arrest, search, and police custody of women appear effectively to limit the frequency of rape in custody.

NHRC – Its Role In Curbing Custodial Crimes

The National Human Rights Commission had issued general instructions in 1993 that within 24 hours of occurrence of any custodial death, the Commission must be given intimation about it. These intimations were to be followed with Post-mortem Reports, Magisterial Inquest Reports and Videography Reports of the postmortem. In a meeting of NHRC and the State Human Rights Commissions (SHRC) on December 9, 1998, some recommendations were made like the changes in the Jail Manuals, to put obligation on the State authorities to inform the concerned State Human Rights Commission of custodial deaths and Guidelines for videotaping the post-mortems of custodial death cases etc.

THE PROTECTION OF HUMAN RIGHTS ACT [1993] established the NHRC, empowers the commission to “visit, under intimation to the state government, any jail...”

Judiciary on Custodial Crimes

In the absence of any direct statutory provisions, the Supreme Court in the famous case *DK BASU V STATE OF WEST BENGAL* laid down an Arrest and Detention Code requiring the police to carry identification, prepare a memo of arrest with full details attested by a third party, notify a friend or relative of the accused of the arrest, inform the arrestee of the grounds of arrest, make an entry into a police diary, record an inspection memo on search and seizure, provide for medical examination within 24 hours, transmit all arrest documents to the district magistrate, enable the accused to meet a lawyer during, but not throughout, interrogation and create an oversight by a police control room within 12 hours of arrest in each district. Failure to follow these instructions would result in departmental investigation and contempt of court proceedings. In *MUNSHI SINGH GAUTAM & OTHERS V STATE OF MADHYA PRADESH* the court asserted, “Custodial violence, torture and abuse of police power are not peculiar to India”. But pray, in which other democracy governed by the rule of law is it so widespread and unchecked.

om ARTICLE 21, which is one of the luminary provisions in the Constitution and is a part of the scheme for fundamental rights, occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right, i e, personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an inbuilt guarantee against torture or assault by the state or its functionaries.

The apex court in a series of cases asserted the rights of the victims of police custody such as *Gauri Shanker Sharma v State of UP*, *Bhagwan Singh v State of Punjab*, *Nilabati Behera v State of Orissa*, *Pratul Kumar Sinha v State of Bihar*, *Kewal Pati v State of UP*, *Inder Singh v State of Punjab*, *State of MP v Shyamsunder Trivedi* and *DK Basu v State of West Bengal* etc. But it appears that till date, the court's rulings have had no effect at all.

The LAW COMMISSION IN ITS 113TH REPORT recommended amendments to the Evidence Act, 1872 so as to provide that in the prosecution of a police officer for an alleged offence of having caused bodily injuries to a person while in police custody, if there is evidence that the injury was caused during the period when the person was in custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period unless the police officer proves to the contrary. The onus to prove “the contrary” must be discharged by the police official concerned. The Supreme Court recommended, “Appropriate changes in the law not only to curb custodial crimes but also to see that such crimes do not go unpunished. The courts are also required to have a change in their outlook, approach, appreciation and attitude, particularly in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather

than a narrow technical approach.”

Having signed the CONVENTION AGAINST TORTURE on October 14, 1997, India did not ratify it. The National Human Rights Commission has done some good work in the past. But as recorded by the Human Rights Features, at a recent international conference, the NHRC asked that “it be excused from any recommendations” of the advisory council of jurists, which has been studying the subject, as India is not a party to the Convention or even to the ROME STATUTE ON THE INTERNATIONAL CRIMINAL COURT. But state governments have been none too exercised over custodial torture. aw.com

Critical Analysis

In a new emerging global era, the human rights jurisprudence is gaining momentum but till date third degree methods by the police are on the rise to produce quick results of investigation. No doubt, the media and courts have been playing a vital role in checking this serious issue but much more remains to be done. If an inquiry is held, its findings are fabricated and in place of initiating strict disciplinary action, transfer and suspension of the offender Officers are routine attributes of the authorities to pass time. There is positive trend of the judicial policy for compensating victims in torture. But the increasing trends of awarding compensation may deliver the impression that the state is ready to compensate if it can purchase the right to continue to inflict constitutional deprivations on its citizens. The most of the provisions in the Constitution of India, organizations like NHRC and also other laws, unfortunately have remained on paper only like a teeth less tiger. Unless the law of the land is upheld against the guilty law enforcement personnel, custodial death cases will continue to rise. It is for the government and the legislature to give a serious thought to the recommendations of the Law Commission and National Human Rights Commission and bring about appropriate change in the law both to curb custodial crimes & also to ensure that the guilty are punished.

END NOTES & REFERENCES

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⁶ *Nilabati Behari v State of Orissa*, AIR 1993 S.C. 1960

⁷ “Police and Human Rights” under G. B. Pant Award Scheme, BPR&D, New Delhi

⁸ “Indian women fight back against rape epidemic,” Reuters, 19 June 2005

⁹ Ibid

¹⁰ *D. K. Basu v State of West Bengal*, 1997 Cr.L.J.743 S.C.

¹¹ Section 163 & 164

¹² Section 330 & 331

¹³ See Sections 41 -60 of Cr. Pc

¹⁴Section 7

¹⁵Section 29

¹⁶ACTNo. 5 OF 2009

¹⁷See www.nhrc.org

¹⁸Ibid.

¹⁹Section 12(E)

²⁰1997 Cr LJ 743 SC

²¹(2005) 9 Supreme Court Cases 631

²¹AIR 1990 SC 709

²²1992 (3) SCC 249

²³AIR 1993 SC 1960

²⁴1994 Supp. (3) SCC 100

²⁵1995 (3) SCC 600

²⁶1995(3) SCC 702

²⁷1995 (4) SCC 262

²⁸JT 1997 (1) SC 1

²⁹See Munshi Gautam Singh Case

³⁰South Asia Human Rights Documentation Centre, August-September 2005

³¹Available at www.google/romestatute/icc.com

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