



CUSTODIAL VIOLENCE

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ABSTRACT:-

Custodial violence has become a common phenomenon and a routine police practice of interrogation at present times it cause, momentary public uproar but once the incident fades away from the public everything is forgotten. Custodial violence means torture in police custody. Custodial violence is utter violation of human dignity and it detorts individual personality of sufferer,

The Supreme Court Observed:

"'Custodial torture' is a naked violation of human dignity and degradation which destroy, to a very large extent, the individual personality. It is a calculated assault on human dignity and degradation which destroy, to a very large extent, the individual personality. It is also a calculated assault on human dignity and when ever human dignity is wounded, civilization takes a step backward-flag of humanity must on each such occasion fly half-mast."

KEYWORDS-*Violence, Human Dignity, Cruel, in human victim, role of judiciary.*

INTRODUCTION:-

The term "Custodial violence" includes all types of physical and mental torture inflicted upon a person in police custody. Custodial violence is very broad term and it includes death, rapes, torture, illegal arrest and detentions, false implications, disappearance from police custody and other abuses of police powers. In general sense custodial violence refers to torture in police custody. It is very heinous offence committed by the police officers, who have responsibility to protect the citizens. Police officers have responsibility to save the society and protect the members of society. It does not however, include pain or suffering arising only from, inherent or incidental to lawful sanctions of police officials, the protector, he commits crime of custodial violence, and it affects whole criminal justice system. Now people are losing faith in police, people do not believe in police investigation.

In D.K. Basu vs State of Bengal the Supreme Court of India Observed:

"Custodial violence" including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the sane should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is



committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

Causes of Custodial Violence:

The main causes of custodial violence are as follows-

- (a) Police officer are not trained properly for collection of evidences by use of modern scientific methods of investigation. They used third

degree methods for collecting evidences. Third degree of methods of torture and custodial deaths have become an intrinsic part of police investigation.

- (b) Excessive work load, long hours of duty and pressure for speedily completion of investigation creates frustrations, anguish and anger in police officials, which manifests in custodial violence against helpless detainees.
- (c) The police officials are also not properly trained and educated about importance of human rights and human dignity.
- (d) Corruption and political rivalry are also a major cause of custodial violence because police officers or officials have enormous power of arrest and detention.

INTERNATIONAL INSTITUTION:

Custodial violence and abuse of power of law by the enforcing machineries like police is not only peculiar but it is also widespread in this democratic country. It has been the concern of international community as the problem is universal and challengers are almost global. Articles of the universal declaration of Human Rights, 1948 clearly status that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 7 of the international covenant on civil and Political Rights, 1996 also states in a similar thing – "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Further article 9(1) of said covenant also stated that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on each ground and in accordance with each procedure as are established by law."

India has already ratified the aforesaid declaration and covenant. Despite such ratification, the custodial crime continues unabated. In all custodial crimes what is of real importance is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police lockup.

INDIAN CONSTITUTION:

Constitutions are supreme law in India constitution particularly fundamental rights provision protect human dignity and human rights of citizens. Article 20, 21 and 22 of constitution protects a person from torture and other dehumanizing act committed during police custody. Article 21 prohibits torture and dehumanizing treatment and further it prohibits illegal arrest and detention. Article 22 has prescribed a time period within which arrested person must be produced before magistrate. Article 20 enjoins that the no person shall be compelled to be witness against himself. The above provisions of constitution safeguards provide protection to all the person from custodial violence.

Fundament Rights occupy a place of pride in the Indian constitution. Art 21 said "No person shall be deprived of his life or personal liberty except according to procedure established by law." Personal liberty thus is a sacred and cherished right under the constitution. The expression "Life or personal liberty" has been held to include the right to live with human dignity and thus it would also include within itself a guarantee agent torture and assault by the state or its functionaries. Art 22 guarantees protection against arrest and detention in certain cases.

OTHER PROVISIONS:

Constitution of India and criminal procedure code prescribe it any completely ban inflictions of torture in custody. In Indian personal code custodial violence is not expressly and directly described as an offence. Whenever, in certain circumstances custodial violence is punishable under Indian personal code under special provision. Section 330, 331 and 348 in Indian personal code specifically deal with custodial violence. In custody third, degree measures are applied which usually amounts to hurt and grievous hurt. Section 330 provide severe punishment for causing hurt to detinue in custody².

"Whenever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in suffer, any confession or any information which any lead detection of an offence or misconduct or for the purpose of constraining the sufferer or any person interested in sufferer to restore or to cause the restoration of any properly or valuable security or to satisfy any claim or valuable security, shall be punished with imprisonment of either description for a term which may extend to 7 years, shall also be liable to fine."

ROLE OF JUDICIARY IN PREVENTION OF CUSTODIAL VIOLENCE:

A victim of custodial violence can move the court directly through a writ petition for protection of his fundamental rights, specially. The right to life and liberty guaranteed by Article 21 of the constitution. The Supreme Court's juridical activism for protecting the rights of prison inmates and détentés is discernible from a series of cases decided by the Supreme Court. In many cases Supreme Court and High Courts have given some directions for prevention of custodial violence.

STATE OF MP V/S SHYAM SUNDAR TRIVEDI³:

Supreme Court directed that the trial courts should not adopt technical approach in custodial violence cases.

"The Trial Court and High Court, if we may say so with respect, exhibited a total lack sensitivity and a "court not careless" attitudes in appreciating the evidence on the record and these by condoning the barbarous third degree methods which are still being used at some police stations, despite being illegal. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecuting ignoring the ground realities, the fact situations and the peculiar circumstances of a given case, as in the present case after results in miscarriage of justice and makes the Justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged.

Custodial violence poses serious threat to society governed by law, it is committed by the person who has responsibility to prevent the crime and protect the society. In D.K. Basu, vs state of West Bengal, the Supreme Court observed that-

"Using any form of torture, for extracting any kind of information would neither be right nor just nor fair" and, therefore, would be permissible, being offensive to article 21 such a crime suspect must be interrogated indeed subjected to sustained and scientific interrogation – determined in accordance with the provision of law. He cannot, however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. challenges of terrorism must be met with innovative ideas and approach.⁴

Usually police officer abuses power of arrest without warrant, for checking abuse of arresting power of Supreme Court in D.K. Basu case under guidelines, some of which have now been incorporated in criminal procedure code by making amendments in 2005 and 2008. Guidelines provided by the Supreme Court are as follows:-

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all police personnel who handle interrogation of the arrestee must be recorded in a register.
2. That the police officer carrying out arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and the date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed as soon as practicable, (or possible) that he has been arrested and is being detained at the particular place, unless the arresting witness of the memo of arrest himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of this right to have some one informed of his arrest or detention as soon as he is put under arrest or his detained.
6. An entry must be made in the diary at the place of detain regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody of the arrestee.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor

- injuries may present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the person arrested and the police officer affecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health services of the state or union territory concerned should prepare such a panel for all Tehsil and District as well.
 9. Copies of all documents including memo of arrest, referred to above, should be sent to the **illagua** magistrate for his record.
 10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout his interrogation.
 11. A police control room should be provided at all district and state head quarters, where information regarding arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and the police control room, it should be displayed on a conspicuous notice board.

To prevent the custodial violence in police custody under detain cases court further directed to the government that above direction shall be circulated among the concerned authorities of personnel's, and would be broadcasted on the all India Radio Doordarshan. Referring to payment and compensation in cases of custodial death, the court said monetary compensation is an appropriate and indeed effective and sometimes the only suitable remedy for redressal for established infringement of fundamental right to life of the citizen. In *Shakila Abdul Jafer vs Vasant Raghunath Dhokle*⁵ the Supreme Court expressed great concern for defect in the present criminal law due to which police atrocities and custodial crimes go unpunished and suggested to amendments of Evidence Act as recommended by the Law Commission. In this case the husband of the complainant was arrested in respect of FIR lodge at D.N. Nagar police station on the allegation that he had caused grievous hurt to one Vishnu Sone Bhuwas. The deceased inform his wife that he was required to go to the police station in connection with one case. The complainant having found that he had not returned home in the night, she came out of her house to search her husband. The accused came out of the police van along with some police officials and they were dragging he deceased. The complainant saw that the condition of her husband was not sound and he was not even able to stand up. On the hearing of the complainant, mother and sister of the deceased came to spot and saw the assaults on the deceased. The complainant was sure that he had been assaulted in previous night. The accused and police officials continued to beat the deceased. The complainant made representation to police authorities like commissioner of police but no action has been taken by any one. She also made complaint to Prime Minister and the President. At last a private complaint was filled to the magistrate in 1984 after one year and case was admitted for session trial. The Trial Court found the accused guilty but the conviction and sentence was set aside by the High Court. The Supreme Court observed that "Although due to various discrepancies the acquittal of the accused was proper but directed the government to pay compensation of Rs. 1 lakh to the mother and children of accused to custodial death."

In the matter custodial violence court always show serious attitude. Judiciary always protects human rights and human dignity of citizens. The situation has been further observed in the following cases:-

People's union for civil vs state of Maharastra,⁶

All cases of death in police action in states shall be reported to the commission by senior Superintendent of Police of the district within 48 hours of such death in the following format- Date, Place, Police Station, District, Circumstances Leading to death.

Re Inhuman conditions in 1382 prisons vs state of Assam,⁷

There must be genuine desire to ensure that guarantee to a life of dignity is provided to the extent possible even in prison under Art. 21 of the constitution. It is appropriate to compensate the next of kin for an unnatural custodial death.

CONCLUSION:

To the preventions of custodial violence international community has made various conventions and treaties, directed state authority for enactment and checking this menace. State members have passed law for this purpose but problem of custodial violence becoming more and more devastating and terrible. Constitution

of India under Art. 20, 21 and 22 provided measures against custodial violence. Indian penal code explicitly and implicitly penalizes custodial violence. In criminal procedure code attempt have been made by prescribing restrictions, regulations and checks the powers of police officers. Indian Evidence Act makes evidences collected by police officers by custodial violence or in circumstances in which probably of use of violence is there, inadmissible. In spite of legal measures and judicial directions problem is unchecked creating greater challenge before criminal justice system.

But these provisions seems to be only paper tigers and in reality have no deterrence as no person dares to file complaint for custodial violence and if filed investigating officers do not investigate the case properly because of police brotherhood "This is the real situation."

To prevent custodial violence the police force must be sanitized and moral values should be included during their training. The police personnel must realize that the uniform is given to them for serving (saving) the people. They must change their attitude so that people are not frightened to approach the police.

SUGGESTION:

Following suggestion for prevention of custodial violence may be given that-

- 1- There must be a separate investigating prosecuting agency.
- 2- To increase number of investigating officers.
- 3- A new investigating agency should be established for investigating only cases of custodial violence.
- 4- To dismiss such in human, cruel personnel from police service and to forfeit all monetary benefits provided or due to them like gratuity, pension etc.
- 5- To review all cases where false confession were extracted from innocents by use of third degree torture.
- 6- To make at mandatory provisions for police to use scientific tools of investigations like brain mapping polygraph (lie detector), Narco analysis test etc without bias against suspect rich or poor.
- 7- To include human rights education in preliminary and police training (refresher course of human rights) of police personnel.

REFERENCE:

- 1 D.K. Basu vs State of West Bengal AIR 1997 1 SCC 416.
- 2 Indian Penal Code Section 330.
- 3 (1995) SCC 262.
- 4 (AIR 1997 Page 610).
- 5 AIR 2003 Page 4567.
- 6 AIR 2014 Criminal Appeal No. 1255 of 1999.
- 7 AIR 2017 Civil Appeal No. 406 of 2013.



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