

never ostentation, is the essence of forensic parameters. Declaration of wealth and high code of conduct are binding principles. High education, professional ability, advanced technology and mega-factories and wealth belong to the rich and they control the country's resources, police power and incarceratory power. If this superior class manages to gain judicial power too, Indian law is likely to be interpreted and adjudicated in favour of the creamy layer and the robber sector. The weaker sector finds law to be its enemy if the instrument of law is in the hands of the higher class".

"There is no doubt that we are surrounded in our adult life with a wealth of humbugs : fame humbugs, wealth humbugs, patriotic humbugs, political humbugs, religious humbugs and humbug poets, humbug artists, humbug dictators and humbug psychologists," said *Ling Yutang*.

Once *Winston Churchill* said in the Commons, "The Courts hold justly a high, and I think, unequalled preeminence in the respect of the world in criminal cases, and in civil cases between man and man, no doubt, they deserve and command the respect and admiration of all classes of the community, but where class issues are involved, it is impossible to pretend that the Courts command the same degree of general confidence. On the contrary, they do not, and a very large number of our population has been led to the opinion that they are, unconsciously, no doubt, biased".

As *David Pannick* wrote, "We need Judges who are trained for the job, whose conduct can be freely criticized and is subject to investigation by a Judicial Performance Commission; Judges, who abandon wigs, gowns, and unnecessary linguistic legalisms; Judges who welcome rather than shun publicity for their activities".

DEVELOPMENT OF CRIMINAL LAW AND HUMAN RIGHTS — ROLE OF JUDICIARY

By

—G. SRINIVASULU, M.Sc., L.L.M.
Inspector of Police,
Vigilance & Enforcement,
A.P. TRANSCO, Hyd.

The Criminal Law jurisprudence is based upon certain important dicta.

1. Every person must be presumed to be innocent till he is proved guilty.
2. Let 100 criminals escape but not one innocent person be punished.
3. In criminal law the proof should be established beyond a reasonable doubt to punish the accused.

The Supreme Court diluted the application of Proof beyond reasonable doubt doctrine

to show its sensitivity towards societies' needs to ensure the punishment of guilty. In *Bhagwan Din v. State of Madhya Pradesh*¹ the Supreme Court confirming death sentence on several members of MCC for murdering 35 people from another caste in Bihar seriously questioned that the doctrine was leading to too many acquittals and laid down that it was not required to meet every hypothesis put forward by the accused. But the Court definitely deviated from application of the 'rarest of the rare cases' principle enunciated

1. (2002) 4 SCC 85

earlier. In another case the Court held that 'exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicion and thereby destroy social defence. *Gangadhar Behera v. State of Orissa*². The Court expressed its pro-prosecution stance in *Shamsher Singh v. State of Haryana*³ by observing that "initial presumption of innocence of an accused disappears on conviction after trial subject to the orders to be passed in further appeals". It suggested stringent punishments without any exception in election related violence and political crimes, *Ruli Ram v. State of Haryana*⁴.

Confessions

The Supreme Court in a number of cases reiterated that conviction can be awarded despite minor discrepancy in the evidence (*Dharmendrasinh v. State of Gujarat*)⁵. However it cautioned not to resort to harsh measures like TADA unless the nature of activities of the accused cannot be checked and controlled under the ordinary law (*R.S. Savant v. State of Maharashtra*)⁶. The Court also has permitted recording of the confessions on mechanical devices including computers as admissible (*B.D. Shetty v. CEAT Ltd.*)⁷.

Custodial Rights Jurisprudence and Torture

The Supreme Court in *Sheela Barse*⁸ case realized the lack of proper review of arrest by independent third party and suggested intimation of suspected the arrested to the District Legal Aid Committee. The National Police Commission, the Private Member Bills moved in Karnataka and Andhra Pradesh

also suggested strengthening the intimation, and documentation of arrest. The Civil Liberties Group in India have been voicing for these reforms over two decades in India. At last, these several suggestions, recommendations and demands were echoed by the Supreme Court in *Joginder Kumar v. State of Uttar Pradesh*⁹ and *D.K. Basu* cases.

The National Human Right Commission has welcomed the detailed instructions of the Indian Supreme Court in *D.K. Basu* in preventing custodial violence. The Commission has been preparing a charge to translate *D.K. Basu* directions into all religious languages and to be affixed on the walls of police stations and lock-ups informing those who have been detained or arrested of their rights (*D.K. Basu v. State of West Bengal*)¹⁰.

The Supreme Court decision in *D.K. Basu* is considered as a landmark decision in refining custodial rights jurisprudence against torture. In this case the Supreme Court resorted to a concerted application of Arts. 20(3), 21, 22(1) and (2) in laying down the eleven guidelines. The Court in *K. Basu* expanded the content of Art. 22(1) which confers to the accused the right to be informed ground of arrest and right to consult a lawyer by reading the Maneka Principle of fairness of procedure into Art. 22(1). To this extent the case made headway and is likely to reduce police torture in future. However as compared to Miranda Rules in the United States the Court did not go far enough in availing the assistance of station-house lawyer to the indigent arrestee free of cost. Further, the rule excluding unlawfully obtained evidence is not propounded in the guidelines. Perhaps in view of crime control function of the State, the Court adopted a hesitant approach in this regard. If the Court is concerned with prevention of torture it should recognize and apply the exclusionary rule. The statement

2. (2002) 8 SCC 381

3. (2002) 7 SCC 536

4. (2002) 7 SCC 691

5. (2002) 4 SCC 679

6. (2002) 5 SCC 604

7. (2002) 1 SCC 193

8. (1983) 2 SCC 96

9. Judgment Today 1994 (3) SC 424

10. AIR 1997 SC

obtained by torture is often an 'unreliable' and contrary to the principle of 'fair trial' and these types of practices must be discouraged by devaluing its product.

In a landmark judgment in *O.K. Bam v. State of W.B.*¹¹, the Supreme Court has laid down detailed guidelines to be followed by the Central and State investigating and security agencies in all cases of arrest and detention. The matter was brought before the Court by Dr. D.K. Basu, Executive Chairman of the Legal Aid Services, a non-political organization, West Bengal through a public interest litigation. He addressed letter to the Chief Justice drawing his attention to certain news items published in the Telegraph and Statesman and Indian Express regarding "deaths in police lock ups and custody". This letter was treated as a writ petition by the Court.

"Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law" (*Kuldip Singh* and Dr. A.S. Anand, JJ. observed) Dr. Justice Anand who delivered the said judgment on behalf of the Court held that, any form of torture or cruel, inhuman or degrading treatment, would fall within the inhibition of Art. 21 of the Constitution whether it occurs during investigation, interrogation or otherwise.

The Court held that the precious right guaranteed under Art. 21 of the Constitution could not be denied to convicts, under trials, detainees and other prisoners in custody, except according to the procedure established by law.

Following guidelines have been laid down by the Court to be followed in all cases of arrest or detention till legislative measures are taken.

1. The police personnel carrying out the arrest and handling the interrogation of the arrest should bear accurate,

visible and clear identification and name tags with their designation.

2. The police officer carrying out arrest of a person shall prepare a memo of arrest at the time of arrest and such memo must be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made.
3. A person who has been arrested or detained shall be entitled to have one friend or relative or other person known to him or having interest in his welfare informed as early as possible.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police within a period of 8 to 12 hours after the arrest.
5. The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
6. An entry must be made in the diary at the place of detention regarding the arrest of the person.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his or her body, must be recorded at that time.
8. The person should be subjected to medical examination by a trained doctor within 48 hours during his detention or by a doctor on panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. The Director, Health Services, shall prepare such a panel for all tehsils and districts as well.
9. Copies of all the documents including the memo of arrest should be sent to the area Magistrate for his record.

11. AIR 1997 SC 610

10. The arrestee may be permitted to meet his lawyer.
11. A Police Control Room should be provided at all District and State headquarters, where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of effecting the arrest and it should be displayed conspicuously on the Notice-Board of the Police Control Room.

The Court made it clear that failure to comply with the guidelines should, apart from rendering the official concerned liable for departmental action, also render him liable to contempt of the Court and the proceedings for contempt may be instituted in any High Court of the country, having territorial jurisdiction over the matter. The requirements referred to above flow from Arts. 21 and 22(1) of the Constitution and need to be strictly followed. These would apply with equal force to the other Governmental agencies like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard CRPF, SF, CISF, the State Armed Police Intelligence Agencies like the Intelligence Bureau, RAW, CBI, CID, Traffic Police, Mounted Police and ITBP.

These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by Courts from time to time in connection with the safeguarding of the right and dignity of the arrestee.

The Court directed that these directions shall be widely circulated amongst the concerned authorities and personnels, and would be broadcasted on the All India Radio and Doordarshan.

Referring to payment of compensation in cases of custodial death, the Court said monetary or pecuniary compensation is an

appropriate and indeed effective and sometimes the only suitable remedy for redressal for established infringement of the fundamental right to life of citizen by the public servants and the State was vicariously liable for their Act.

The claim of the citizen is based on the principle of strict liability to which the defence of a sovereign immunity is not available and the citizen must receive the amount of compensation from the State, the Court observed.

In *Mohd. Munna v. Union of India*,¹² the Supreme Court pointed out :

It was observed and held that life imprisonment is not equivalent to imprisonment for fourteen years or for twenty years. All contentions raised by the petitioner failed and the petitioner was not entitled to be released on any of the grounds urged in the writ petition as long as there was no order of remission passed by the appropriate Government in his favour. The Court made it clear that its decision need not be taken as expression of its view that the petitioner was not entitled to any remission at all. The appropriate Government would be at liberty to pass an appropriate order of remission in accordance with law.

In *Balkar Singh v. Jagdish Kumar*¹³:

The appellant, working as Agricultural Development Officer in Department of Agriculture, filed an F.I.R. against the respondents alleging commission of Criminal Acts punishable under Sections 382, 353, 506, 186 of IPC when he, along with the staff, had gone to check the Stock Register and quality of goods sold by them. On the same day the two accused concerned sent complaints to the State Government alleging among other things, demand of bribe and consequent harassment meted out by appellant

12. AIR 2005 SC 3440

13. (2005) SCC 186

to them for non-payment of bribe. On that basis, the Government initiated certain inquiries and based on the report received on such inquiries, the opinion of the District Attorney was sought, who recommended filing of an application under Section 321, Cr.P.C. for withdrawal of the prosecution. During pendency of prosecution, the respondents filed petitions under Sections 482, Cr.P.C. before the High Court. In view of the order of stay granted by the High Court in the quashing proceedings, the proposed framing of charge by the trial Court could not be proceeded with. When the High Court was seized of the petitions, a statement was made on behalf of the State that a decision had been taken by the Government to withdraw the complaint. When Section 321 application was still pending, the High Court, by the impugned orders, quashed the criminal proceedings against the respondents and directed the police authorities and the Magistrate not to prosecute the respondent-petitioners.

The Supreme Court observed and held that the decision of the Government to withdraw the prosecution is an irrelevant

ground, so far as the High Court is concerned, to allow a petition for quashing. It is rather surprising why further directions were issued by the High Court to the police and the Magistrate not to prosecute the petitioners once it quashed the complaint. The direction issued in the impugned order by the High Court is wholly without jurisdiction even under Section 482 of the Cr.P.C.

The survival of our democracy and unity and integrity of the nation depend upon the realization that Constitutional morality is no less essential than constitutional legality. *Joseph story* the Great American Jurist who was quoted by *Sachchidananda Sinha* in his inaugural address as provisional Chairman to the Constituent Assembly on 9.12.1946, warned long back that the Constitution has been reared for immortality, if the work of man may justly aspire to such a title. It may nevertheless perish in an hour by the folly, or corruption or negligence of its only keepers, the people. The Judiciary who is accountable to the Constitution of India must be strengthened in all respects for the promotion of Human Rights Jurisprudence.

IS KANYADANAM A VALID CEREMONY

By

—JUSTICE Ch. S.R.K. PRASAD,
Former Judge,
High Court of Andhra Pradesh

In almost all states in Southern India as well as in Northern India Kanyadanam ceremony is propitiated by purohits during Hindu Marriages. It my view that the said ceremony shall not be performed since it is opposed to Articles 14, 15 19 and Article 21 as well as basic Human Rights. A valid marriage arises only with consent in between

two majors since marriage-able ages are mentioned under Hindu Marriage Act, 1955. The Indian Women either illiterate or literate undergo the said ceremony without protest or demur or understanding. The ceremony consisting bride bedecked with new clothes and jewels and donating and gifting bride to the bridegroom by parents of bride. It is an insult