

PROTECTING 'TORTURE' VICTIMS-APPROACH OF SUPREME COURT.

By

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The General Assembly of United Nations in its Declaration on the Protection of all persons from being subjected to Torture or Cruel, inhuman or Degrading Treatment or Punishment adopted on 9th December 1975, had declared its to resolve to combat with the evil of 'torture'. In its desire to make it more effective, the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world, the United Nations General Assembly adopted a Convention known as 'Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment' which came into force in 1987, and it was signed by more than 120 countries.

Article 21 of the above convention defines 'Torture' as, "any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person, or 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 or incidental to lawful sanctions. Article 4, para (1) laid down that "Each party shall ensure that all acts of torture are offences under its Criminal Law, and more importantly Article 2 Para (1) laid down that "Each state party shall take effective legislative administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction.

The philosophy of police propagated during British India period is that "WE WILL TORTURE THE TUTH FROM HIS LIPS", still continues to survive and flourish even in the post independent era, at the grass root level of the police administration including both rural and urban India. Unfortunately the powerful winds of "HUMAN RIGHTS" could only shatter the outer structure of police administration but could not uproot the strong foundation deep-rooted in the police administration and "TORTURE" not only continues to be used unabated but also unashamedly as a cancerous wound on the face our civilized society. It is not only a threat to the human dignity and honour but also a challenge for all those who are committed to the Human Rights philosophy. Much of the concern of Human Rights activism has been towards the victims of Police, Army and other Para Military forces.

The Supreme Court in a catena of cases not only condemned police atrocities but also started with harsh stringent language providing compensation to the victims of police atrocities.

The anguish and pain of the Supreme Court against 'Torture' and violation of Human Rights can be seen in the following cases:—

The shocking facts of *Bhagalpur Blinding case*¹, the Supreme Court imposed a liability upon the State to pay compensation to the victims who are tortured and blinded in the prison for violation of their personal liberties under Article 21 of the Indian Constitution.

1. *Khatni vs. Bihar*, AIR 1981 SC 1068.

The Court agreed that in the light of dynamic constitutional jurisprudence such a claim of compensation could be made.

In the case of *Rudulbab*², the Supreme Court of India granted monetary compensation amounting to Rs. 35,000/- to an ordinary citizen against the lawless act of Bihar Government which kept him under illegal detention for more than 14 years after his acquittal.

In *People Union of Civil Liberties* case³ the Supreme Court came down heavily on state sponsored tortures and killings and ordered to pay Rs.1 lakh to each victim who were infact detenues.

In *D.K. Basu's* case⁴, Justice *Kuldip Singh* and Justice *A.S. Anand* have termed the death by torture in police custody as the worst and most heinous crime.

In *Raghubir Singh's* case⁵, the Supreme Court observed that. We are deeply disturbed by the diabolic recurrence of police torture resulting in a terrible trauma.

In *Mohd. Giasuddin's* case⁶, Supreme Court held that our prisons should be correctional houses and not cruel iron cages aching the soul.

In *Menaka Gandhi's* case⁷, the Supreme Court held that "Right to live is not restricted to mere animal existence it means some more thing, more than physical survival and "Right to live includes right to live human dignity.

In *Kewal Patti's* case⁸, the Supreme Court held that it is the duty of the state to provide security to prisoners. If it fails and incident takes place in jail, Government has to pay compensation to the dependants of the deceased person.

In *Pandit Paramanand's* case⁹, Supreme Court held where a doctor gave a certificate of death and the dead body was not lowered for ½ an hour after the certificate of death, it amounts to violation of human right.

The crux of the issue was crystallized by the Supreme Court while dealing with *D.K. Basu vs. State of West Bengal, Ashok Jobre vs. State of Uttar Pradesh*, (1996) ICHRL 95 (18-December 1996)¹⁰.

In issuing directions regarding procedures to be followed in relation to arrest and detention and the awarding of compensation for custodial violence, it was held that.

1. The constitutional safeguards to protect individual's personal liberty against any unjustifiable assault by the state include Articles 21, 22 and 20(3). A number of statutory provisions also seek to protect personal liberty, dignity and the basic human rights of citizens. However, despite such provisions, the growing incidence of torture and deaths in police custody has assumed such alarming proportions that it is affecting the credibility of the rule of law and the administration of the criminal justice system.
2. Any form of torture or cruel, inhuman or degrading treatment falls within the ambit of Article 21, whether it occurs during investigation, interrogation or otherwise. The precious right

2. *Rudulbab vs. State of Bihar*, AIR 1983 SC 1086.

3. *Peoples Union of civil Liberties vs. Union of India*, AIR 1997 SC 1203 = 1997 (2) ALD (SCSN) 39.

4. *D.K. Basu vs. State of West Bengal*, AIR 1997 SC 610 = 1997 (1) ALD (CrL) 248 (SC).

5. *Raghubir Singh vs. State of Hararyana*, AIR 1980 SC 1087.

6. *Mohd. Giasuddin vs. State of Andhra Pradesh*, AIR 1977 SC 1926.

7. *Menaka Gandhi vs. Union of India*, AIR 1978 SC 597.

8. *Kewal Patti vs. Union of India*, AIR 1995 SCW 2236.

9. *Pandit Paramanand vs. Union of India*, AIR 1995 3 SCC 248.

10. AIR 1997 SC 610.

guaranteed by Article 21 cannot be denied to convicts, under trials, detenus and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions on the right as are permitted by law (*Nilabati Behera vs. State of Orissa* (1993) 2 SCC 746 (Ind SC) followed).

3. The Supreme Court has laid down procedural requirements in cases of arrest (*Joginder Kumar vs. State of UP* (1994) 4 SCC 260 (Ind SC) followed). However, instances have come to the Court's notice where the police have arrested a person without a warrant in connection with the investigation of an offence, without recording the arrest, and the arrested person has been subjected to torture to extract information from him or her for the purpose of further investigation, recovery of case property or in order to extract a confession. In addition to the statutory and constitutional requirements referred to above, it would be useful and effective to structure appropriate machinery for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability.
4. During the prosecution of offences of torture and custodial death, the exaggerated adherence to, and insistence upon, establishing proof beyond every reasonable doubt ignores the reality, the fact situation and the peculiar circumstances of a given case and often results in a miscarriage of justice and suspicion of the system for delivering justice (*State of M.P. vs. Shyamsunder Trivedi*, (1995) 4 SCC 262 (Ind SC) followed). Parliament's attention is drawn to the urgent need to amend the rules of evidence regarding prosecution of police officials accused of custodial violence, in particular the recommendations of the Law Commission of India in its 113th Report regarding a shift in the burden of proof, with the introduction of a presumption of custodial violence if there is evidence that the detainee's injury was caused during the period of detention, and the consideration by the Court of all relevant circumstances.
5. As preventive measures, the following requirements are to be followed in all cases of arrest or detention until legal provisions are enacted.
 - (i) Police personnel carrying out arrest and interrogation should wear accurate, visible and clear identification and name tags with their designations, the details of which should be recorded in a register;
 - (ii) A memo of arrest (including the relevant date and time) shall be prepared by the arresting police officer and shall be attested by at least one witness (either a relative of the arrestee or a respectable local person) and countersigned by the arrestee;
 - (iii) One friend or relative of the arrestee (or another person known to him or her who has an interest in his or her welfare) shall be informed, as soon as practicable, of the arrest and detention at the place in question;
 - (iv) Where the next friend or relative of the arrestee lives outside the district or town in question he or she must be notified by the police of the time, place of arrest and venue of custody within 8 to 12 hours of the arrest;
 - (v) The arrestee must be informed of this right as soon as he or she is arrested or detained;

- (vi) An entry must be made in the diary at the place of detention regarding the arrest of the person, including the name of the next friend who has informed and the names and particulars of the police officers in whose custody the arrestee is detained;
- (vii) On request, the arrestee should be examined for injuries at the time of arrest and provided with a copy of the resulting report, signed by both the officer and arrestee;
- (viii) The arrestee should undergo a medical examination every 48 hours by a doctor from an approved panel;
- (ix) Copies of all documents regarding the arrest are to sent to the appropriate local Magistrate for his or her records;
- (x) The arrestee may be permitted to meet with his or her lawyer during interrogation, though not throughout the interrogation;
- (xi) A police control room must be established at all district and State headquarters where information regarding the arrest should be received within 12 hours of the arrest and displayed on a conspicuous notice board;
- (xii) These requirements are in addition to existing safeguards and do not detract from other directions given by the Courts on this matter. They will apply with equal force to the other governmental agencies, which have the power to detain and interrogate individuals. They need to be followed strictly; failure to comply shall render the official concerned liable for departmental action and contempt of court proceedings.
- The Supreme Court in its pungent language further observed that.
1. Custodial torture is a naked violation of human dignity and degradation, which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and hence on civilization itself.
 2. The police are, no doubt, under a legal duty and have a legitimate right to arrest a criminal and to interrogate him or her during the investigation of an offence but it must be remembered that the law does not permit the use of third degree methods or torture of accused persons during interrogation and investigation with a view to solving the crime. The end cannot justify the means. Even where the police are performing a difficult and delicate task in exceptional law and order situations, such as terrorism, or dealing with hardcore criminals, a balanced approach is needed to meet the ends of justice (*Miranda vs. Arizona* 384 US 436 (1966) (US SC) applied).
 3. There is a need, therefore, to develop scientific methods of investigation and train investigators in proper interrogation techniques.
 4. The 1979 reservation made by the Government with respect to the right to compensation for victims of unlawful arrest or detention under Art 9(5) of the International Covenant of Civil and Political Rights has now lost its relevance in view of the law laid down by this Court in a number of cases awarding compensation for the infringement of the fundamental right to life of a citizen (*Rudul Shah vs. State of Bihar* (1983) 4 SCC 141 (Ind SC), *Sebastian M Hongray vs. Union of India* (1984) 1 SCC 339 (Ind SC), *Bhim Singh vs. State of J&K* (1984) Supp SCC 504 (Ind SC) and *Sabali, A*

Women's Resources Centre vs. Commissioner of Police, (1990) 1 SCC 422 (Ind SC) referred to).

From the above we can safely conclude that the Supreme Court in its activism has done every thing possible to protect human dignity and honour and gave life to the Human Rights philosophy by going to the extend of drafting a law till the legislature wake up from its slumber and legislate different laws in commitment to the United Nations Covenants.

It will be apt to recall the opinion expressed in the article "A CRIME BY A CRUDE KHAKI CROWD" by Justice V.R.Krishna Iyer published in the Hindu dated 02, July 2001.

Justice Krishna Iyer in his sculptured words

said that "The issue at stake before on billion Indian humans is whether he or she has the right to life and liberty and other basic values writ in print (or water) by the founding fathers. Is the rule of law a teasing illusion or promise of unreality? **Is torture police culture?** If not, in the absence of the slightest suspicious of escape, can the police commit housebreak, inflict mayhem a gerontic gentleman in his sleep? The reputed Tamil Nadu police, I suspect, by their strange conduct, has spoiled India's human rights reputation in the comity of nations.

So I write this piece.....

"Mark Twain comes to mind. It is by the goodness of God that in our country we have these three unspeakably precious things; freedom of speech; freedom conscience, and the prudence never to practice either of them.

OPINIONS OF EXPERTS, WHEN RELEVANT

By

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Meaning of Opinion:

"What a person thinks in respect of the existence or non-existence of a fact is opinion, and whatever is presented to the senses of a witness and of which he receives direct knowledge, without any process of thinking and reasoning is not opinion".

Opinion of third person when relevant:

As a general rule the opinion or belief of third person is irrelevant, and therefore, inadmissible. The witnesses are allowed to State facts and facts alone, *i.e.* what they themselves saw or heard. *Sitaram Srigopal v. Daulati Devi*, AIR 1979 SC 1225. It is the

duty of the Judge to form his own conclusion or opinion on the facts Stated. However the cases in which the Court is not in a position to form a correct opinion, *i.e.* when the question involved is beyond the range of common experience or common knowledge, or when special study of a subject or special experience therein is necessary. The question is whether 'A' died of poisoning, generally, a Judge or a Magistrate by examining the dead body of 'A' cannot form any correct opinion about the matter in issue. In such a case, the help of an expert is necessary.

In these cases, the rule is relaxed and expert evidence is admitted to enable a Court to come to a proper decision.