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Custodial Deaths with Reference to Prevention against Torture Bill, 2017

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ABSTRACT

Custodial death refers to death of the accused in the police custody or by the encounter of the accused by the public servants such as police officials, even without the orders of the court. The useless torture made by the officials to accused even without knowing that whether they are really accused or not. Why such encounters are being made? For the promotion in department?, for getting name, fame and pictures in the front pages of the newspapers?, or for getting extra-money? Now the question arises that how the police officials get extra money? Sometimes they know that person arrested is actually the accused, but the representatives (friends, family or relatives) of the accused bribe the officials to release the actual person and arrest some other person. There is strict need of law to curb this problem. The Prevention Against Torture Bill, 2017 is still pending in the parliament and is waiting to be called as act. Also a movie named “Jolly LL.B 2” depicts the same the scene, that how the police officials release the actual accused and arrest some other person, and latter on his back the official shoots him; why this happened? It was because the officer was bribed. We should just keep one thing in mind that if the situation didn't come in control, then the whole system will be corrupt, as all such termite like people will eat the system.

I. INTRODUCTION

Firstly let's get clear with the meaning of the “custodial death”; it refers to “death of the person in the custody of police, other authorities or in prison”. In current times the situation of custodial death is a controversial subject, as the authorities are often pointed out for abuse, neglect, racism and other allegations for cover-up for such deaths^[1]. Actually the term custodial death is a very wide term and in India, it is often called or heard as “encounter killing”. Basically in this case of custodial death or encounter killing, the police officials do fake arrests and then the fake encounters. The officials only have a single answer in their support that “the encounter was done for defense”. It is mostly done in the cases when the supporters of the

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1. Meaning of Death in Custody (last visited on Aug 10, 2020, 10:14 AM), https://en.wikipedia.org/wiki/Death_in_custody

offender pay the high amount of money to police officials to release the actual offender and arrest the innocent as the offender and then take him to the court of law for the actual case. These encounters are done without any order or notice of the respective court. In India, there were 440 cases of such encounters during the year 2002–2008 and 555 cases between 2009/10–2013^[2]. In year 2010, the Prevention of Torture Bill, 2010, was introduced in the Lok Sabha & on May 06th, 2010, it got the assent & the same was sent to Rajaya Sabha for the assent, but the Rajaya Sabha referred the same to the Select Committee as they had suggested some amendments to make it more compatible with the Torture Convention. But it got lapsed due to dissolution of 15th Lok Sabha. And in the year 2017 it was again introduced in the Rajaya Sabha as private member bill and in Lok Sabha as well. But again it got lapsed due to dissolution of 16th Lok Sabha^[3].

The 273rd Report of the Law Commission was a report in response to a direction by the Central Government while listening of the writ petition filed before the Supreme Court by the former law minister, Mr. Ashwani Kumar for the implementation of UN Convention. It also mentions the case of D.K. Basu v/s State of West Bengal^{[4][5]}.

II. TORTURE AND RIGHT AGAINST TORTURE

The dictionary meaning of the term “torture” is “the infliction of severe physical or mental pain or suffering for a purpose such as extracting information, coercing a confession, or inflicting punishment^[6].” In Tokyo Declaration, 1975, the World Medical Association, the term “torture” has been defined as “the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason^[7].” It literally means that causing physical or mental harassment to an individual or a group of person by one or more than one person on its own behalf or on order of any authority with the aim to make him/her

2. Encounter Killing by Police – In India (last visited on Aug 10, 2020, 10:45 AM), https://en.wikipedia.org/wiki/Encounter_killings_by_police#Police_encounter

3. Prevention of Torture Bill (last visited on Aug 10, 2020, 2:27 PM), [https://sabrangindia.in/article/prevention-of-torture-bill-forgotten-law#:~:text=The%20Prevention%20of%20Torture%20Bill%2C%202010%20was%20introduced%20in%20the,the%20provisions%20of%20the%20Convention.&text=Again%20in%202017%20the%20bill,member%20bill\)%20in%20Lok%20Sabha.](https://sabrangindia.in/article/prevention-of-torture-bill-forgotten-law#:~:text=The%20Prevention%20of%20Torture%20Bill%2C%202010%20was%20introduced%20in%20the,the%20provisions%20of%20the%20Convention.&text=Again%20in%202017%20the%20bill,member%20bill)%20in%20Lok%20Sabha.)

4. 1997 (1) SCC 416

5. *Supra* note 3

6. Meaning of Torture (last visited on Aug 10, 2020, 2:57 PM), <https://www.britannica.com/topic/torture>

7. Definition of Torture from Preamble of WMA Declaration, 1975 of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention & Imprisonment (last visited on Aug 12, 2020, 9:28 AM), <https://www.wma.net/policies-post/wma-declaration-of-tokyo-guidelines-for-physicians-concerning-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-in-relation-to-detention-and-imprisonment/>

confess something or take information from him or any other reason.

There are various articles in the Constitution of India to safeguard the rights of each and every citizen of India. Following are the articles of the Indian Constitution which deals with the rights of the citizens –

- Article 20 deals with Protection in Respect of Conviction for Offences and sub-section 3 to it reads as – “No person accused of any offence shall be compelled to be a witness against himself^[8].” It means that no one can force any person to be the witness against himself for any offence that he committed. The accused has the right to maintain silence and does not speak anything in his defense during the trial.
- Article 21 deals with Protection of Life & Personal Liberty and it reads as – “No person shall be deprived of his life or personal liberty except according to procedure established by law^[9].” It means that freedom from any person cannot be taken directly except the procedure established by the law. For example : a police official cannot arrest any person doing party without any reason unless they have the arrest warrant against him. The Supreme Court of India consistently mentions that Custodial Death is violating the right to life.
- Article 22 (1) reads as – “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice^[10].” It simply means that no person shall be kept on hold while he is in prison without being informed for the grounds on which he is being arrested and moreover, his right to consult or hiring a lawyer in his defense shall not be violated.
- Article 22 (2) reads as – “Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate^[11].” It can simply be understood as any person arrested by the police shall be produced before the nearest magistrate within 24 hours of arrest excluding the travel time (time taken to drive him to the court of magistrate

8. INDIA CONST. art.20, cl. 3

9. INDIA CONST. art. 21

10. INDIA CONST. art. 22, cl. 1

11. INDIA CONST. art. 22, cl. 2

from the police station) and moreover that arrested person shall not be kept on hold in prison after the expiration of period said by the magistrate further without his authority.

III. MAJOR RECOMMENDATIONS

On December 04th, Abdul Wahab of IUML (Indian Union Muslim League) was also the part of signatory author who signed the US Convention against torture keeping the figures of custodial deaths in mind. He further proposed the government to make a law for custodial death. The MHA in regard to US Convention responded as the US Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment directs that each and every state should take fair and effective legislative, administrative, judicial or equivalent actions to prevent such act of torture. The offences which cause harm either of serious or less serious nature with the aim to obtain the confession of someone forcefully will be punished under section 330 and 331 of the Indian Penal Code, 1860, respectively^[12]. And the same i.e. “Prevention against Torture Bill” was presented in the parliament 2010 and 2017 respectively.

IV. AMENDMENT OF CRIMINAL LAWS

The current provisions under different statues induced the Commission to give a suggestion that there is a need to amend Section 357B in case of torture as well, in addition to the payment of fine either under section 326A (Voluntarily Causing Grievous Hurt by Use of Acid, etc) or 376D (Punishment for Gang Rape on Women under Twelve (12) years of Age) of the Indian Penal Code, 1860. On the other hand it gave its opinion that, it should be liability of the state to give the reasons for the injuries or harm incurred by the person while he was in custody. So, it suggested for amendment to the statue of the Indian Evidence Act, 1872, for insertion of Section 114B through the lines of the bill, the Indian Evidence (Amendment) Bill, 2016, which was further introduced in the Rajya Sabha on March 10th, 2017^[13].

The report also added and recommended that the payment of compensation should be made to victims who had suffered torture by the public servants or by someone else on the order or command of public servant or as per the situation. The compensation provided to victims should be keep in mind the nature, background, financial position, nature of injury caused, etc. Also the compensation shall be provided for the mental harassment and it should adequate so

12. Prevention of Torture Bill (last visited on Aug 12, 2020, 10:55 AM), [https://sabrangindia.in/article/prevention-torture-bill-forgotten-law#:~:text=The%20Prevention%20of%20Torture%20Bill%2C%202010%20was%20introduced%20in%20the%20provisions%20of%20the%20Convention.&text=Again%20in%202017%20the%20bill,member%20bill\)%20in%20Lok%20Sabha](https://sabrangindia.in/article/prevention-torture-bill-forgotten-law#:~:text=The%20Prevention%20of%20Torture%20Bill%2C%202010%20was%20introduced%20in%20the%20provisions%20of%20the%20Convention.&text=Again%20in%202017%20the%20bill,member%20bill)%20in%20Lok%20Sabha).

13. *Id.* at 12

that he meet his medical and rehabilitation expenses.

V. NEED OF ANTI-TORTURE LEGISLATION

There is a strict need for such act to prevent custodial deaths or fake encounters which the police officials or other authorities do for their promotions. Till date India is one of the country from eight countries who has not signed the US Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment yet, whereas other 170 countries who have signed the Convention. There are 555 cases of such custodial deaths between years 2009/10–2013^[14] and the very few of cases were registered against these deaths. In the year 2017, 100 number of such cases were observed all over the country. Out of these 100(s), 58 were not on remand (it means that the accused has been arrested but not produced before the court), whereas 42 were on police or judicial remand (it means that the accused has been sent back to prison or lower court for further investigation). In 62 cases of custodial deaths, 33 police personnel were arrested and out of them the charge sheet again 27 police personnel were filed from which 4 were discharged, but no one was convicted or held guilty^[15]. These figures are not the moment of proud, but it is moment of very indignity. The Supreme Court of India has observed also the same the thing i.e. the figures of custodial deaths in 2017. It also observed that it is difficult to get back the police officials from the abroad as India don't have such anti-torture laws. The Supreme Court is in the wait and has full faith that once such law is made by the legislation no person doing such acts will be left unpunished.

VI. RELEVANT CASE LAWS

- **Dagdu & Ors. v/s State of Maharashtra**^{[16][17]}

The Order of the Court was delivered by FAZAL ALI, J. In this appeal by special leave the appellant has been convicted under section 302 Indian Penal Code and sentenced to imprisonment for life. After having gone through the judgment of the Sessions Judge and the grounds taken by the appellant in his appeal by special leave satisfied that this case does raise some arguable points which merit serious consideration by the High Court. We would like to point out that although under section 421 of the Code of Criminal Procedure, 1898 which is section 384 of the Code of Criminal Procedure, 1973 the High Court has the undoubted power

14. *Supra* note 2

15. 2017 Saw 100 Custodial Deaths but Zero Convictions (last visited on Aug 12, 2020, 2:49 PM), <https://www.thequint.com/news/india/not-a-single-conviction-in-100-custodial-deaths-recorded-in-2017-across-india>

16. 1981 AIR 1281, 1981 SCR (3) 288

17. Refer to Websites (last visited on Aug 12, 2020, 4:40 PM), <https://www.sabrangindia.in/article/prevention-of-torture-bill-forgotten-law> & (last visited on Aug 12, 2020, 4:41 PM) <https://indiankanoon.org/doc/930211/>

to summarily dismiss a first appeal against conviction of an accused yet in very serious cases like those under section 302 Indian Penal Code, or other cases where death or life imprisonment can be awarded, the High Court should consider the appeal on merits instead of dismissing it summarily, unless the evidence is so clear and cogent, reliable and creditworthy that on the face of it no case for the barest consideration is made out. It may at times embarrass this Court when the order appealed against prima facie gives rise to arguable points which this Court is required to consider without having the benefit of the views of the High Court on those points.

In my opinion, therefore, when an appeal in the High Court raises a serious and substantial point which is prima facie arguable it is improper for that Court to dismiss it summarily without giving some indication of its view on the points raised. To the same effect is the later decision of this Court in *Sita Ram and Ors.* While holding that a summary rejection of the appeal by the High Court is not violative of any statutory provision, this Court pointed out that it is desirable that reasons are recorded by the High Court when prima facie arguable issues have been raised as that would enable the Supreme Court to appreciate the reasons for rejection of the appeal by the High Court. We, therefore, hold that even if the High Court chooses to dismiss the appeal summarily some brief reasons should be given so as to enable this Court to judge whether or not the case requires any further examination.

The Supreme Court observed, “If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure.” The doctrine of sovereign immunity – a concept of common law principle consistently followed in British jurisprudence in last several centuries that ‘King commits no wrong’. The doctrine evolved on the principle of sovereignty that a State cannot be sued in its own court.

- **D.K. Basu v/s State of West Bengal**^{[18][19]}

At least 591 people died in police custody in 2015, most of them are arrested and have not yet appeared before a magistrate. In 2016, government data recorded 92 deaths in police custody, of which 60 occurred before reaching court. This makes a mockery of sections 55A and 57 of the Code of Criminal Procedure (Cr.P.C.) which places the duties of care of the accused, and the production before a magistrate within 24 hours, to the person in custody.

The facts of the case reads as – DK Basu, Executive Chairman of Legal Aid Services, West Bengal, a non-political organization on 26/08/1986 addressed a letter to the Supreme Court of

18. 1997 (1) SCC 416

19. D.K. Basu v/s State of West Bengal (last visited on Aug 12, 2020, 3:59 PM), <https://lawtimesjournal.in/d-k-basu-vs-state-of-west-bengal/>

India calling his attention to certain news published in the Telegraph Newspaper about deaths in police custody and custody. He requested that the letter be treated as a Writ Petition within the “Public Interest Litigation”. Considering the importance of the issues raised in the letter, it was treated as a written Petition and the Defendants were notified. While the writ petition was being considered, Mr. Ashok Kumar Johri addressed a letter to the Chief Justice of the Supreme Court calling his attention to the death of a Mahesh Bihari from Pilkhana, Aligarh in police custody. The same letter was also treated as a Request for Writing and was included along with D.K.Basu’s Request for Writing. On 14/08/1987 the Court issued the Order issuing notices to all state governments and a notice was also issued to the Law Commission requesting appropriate suggestions within a two month period. In response to the notification, several states submitted affidavits, including West Bengal, Orissa, Assam, Himachal Pradesh, Haryana, Tamil Nadu, Meghalaya, Maharashtra, and Manipur. Additionally, Dr. A.M. Singhvi, Principal Counsel was appointed Amicus Curiae to assist the Court. All of the attorneys who appeared provided useful assistance to the Court.

The case thus gave a landmark judgment where guidelines regarding the arrest of a person were prescribed otherwise more offenses were committed in the name of doing justice. It prevents any infringement with the rights of an individual during detention and thus protects all the citizens by certain procedures established by law. Although now, the proper procedure has been established by law and anyone who does contempt of court is liable to be punished, still, there are crimes similar to those in the above case, for instance, police officials refuse to file an FIR, or does something due to which many innocent people have to suffer injustice and due to which there is infringement with the fundamental rights of the citizens. Therefore, more strict laws should be made so that innocent people have not to suffer.

VII. CONCLUSION

As we all know our country is a developing country and to make it advanced and developed in all aspects we require law for all type of crimes. To develop the law we need strong law making body i.e. legislation, independent judicial system like India which provides end to end justice and does not spare anyone no matter how famous, rich, poor he is, etc. The introduction of the bill by UPA Government was not seriously considered by neither NDA Government in 16th Lok Sabha nor the current BJP Government shows any hint or interest towards the formation of such law. It should be kept in mind while creating such law for prevention of torture is morally important but on the same hand it is equally also important to rectify the old system of prisons. The Union Home Minister has himself said once that western standards of human

rights do not apply to India, thus weaning off the hope that in this term of Lok Sabha there will be any serious consideration of the Prevention of Torture law^[20].

20. *Supra* note 17