



CUSTODIAL ATROCITIES, HUMAN RIGHTS AND THE JUDICIARY

I Introduction

ARTICLE 5 of the Universal Declaration of Human Rights, dated December 10, 1948 proclaims that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Subsequently, the International Covenant on Civil and Political Rights, 1966 created a treaty–obligation under article 7 for the states parties to it that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. One needs to examine as to how far India which voted for the Universal Declaration in the General Assembly of the United Nations, and is a party to the International Covenant of 1966 have observed these in practice. For, hardly a day passes without the news of police atrocities, torture and brutality being reported. Increasing frequency of custodial atrocities and its reportings in the media expose police to severe criticism. Nothing blemishes the image of police more than the brutality directed against persons in their custody and, no doubt, whenever a hapless victim in police custody is tortured or killed, human dignity is affronted. However, following the spirit of the Universal Declaration, India proclaimed its faith in fundamental freedoms in its Constitution which provides for a life of dignity and honour as incorporated in the preamble and in the chapter on fundamental rights. By providing for the fundamental right to constitutional remedies, the Constitution entrusted the task of protecting the fundamental freedoms to the judiciary. Hence, being a sentinel of these inalienable rights, the judiciary has the prime obligation to be utmost careful and to resist even the slightest intrusion into its domain in safeguarding the human dignity which the founding fathers of our Constitution have so passionately guaranteed therein.

This paper intends to examine the problem of custodial atrocities with its brief history, causes of custodial atrocities and the safeguards provided for under the national and international instruments and, finally, to assess the role of the judiciary in this regard.



II Problem of Custodial Atrocities

Custody commences from the time restrictions are imposed on the movements of an accused and he is kept under detention by the authorities. It includes a situation where the detenu is called to the police station for the purpose of interrogation and from the time a person is placed under arrest.¹ It implies that in every arrest custody is necessarily involved but *vice-versa* need not necessarily exist. Custody may amount to arrest in certain cases but not in all cases. Hence, actual detention, confinement or arrest is not necessary for custody. Only submission of an accused into custody by any action or words of the police is sufficient.²

Custody does not involve any sinister symptom of violence and atrocity, rather it involves, in almost all the cases and circumstances, guardianship and protective care of detenu. The same is applicable to police custody also. However, police has power to arrest a person even without obtaining warrant of arrest from a competent court of law. Besides, law enables the police to use force as and when conditions so require in dealing with law and order situation. However, the power to use such force should be as minimal as could be. The expanse of powers conferred on police casts an obligation on them to take utmost care and caution in exercising their power and performing their duties. They must bear in mind that an arrested person is not deprived of his constitutional and fundamental rights. Neither a citizen sheds off his fundamental right to life the moment police arrests him nor can his right be kept in abeyance on his arrest. A civil society governed by the 'rule of law' never intends that police should misuse its powers. Of course, they can question anybody during the course of investigation. But certainly, they are not expected to misuse their authority and power to harass hapless people and crime suspects, whenever they want. Unfortunately, authorities and police during the course of crime control and investigation, misinterpret the powers and frequently use third-degree methods as and when they like upon hapless suspects. Undoubtedly, this action of police is nothing but misuse of their powers and miscarriage of justice. For, responsibility of crime investigation conferred on police is to give relief to poor and hapless victims who are not able to approach the courts of law and if the investigating officer as well as relief provider becomes an assailant, it would be the worst form of brutality.

1. *Joginder Kumar v. State of UP*, AIR 1994 SC 1349; *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416; See also Ruma Pal, "Tackling Custodial Crimes: An Overview" *Human Rights Year Book* 100-10 (2000).

2. N.K. Jain, "Custodial Crimes: An Affront to Human Dignity" *Human Rights Year Books* 64 (2000).



Ample examples are there to show that despite being illegal, third degree method, sometimes resulting into death, is being used by the police with a view to extract and elicit evidence and information from crime suspects.³ They often try to justify their action as they think that they are serving a higher cause by solving a case with an extracted confession. Disgusting criminal activities of arrestees, sometimes, force the police officers not to consider them as human. That is why they think that the detenu deserves third degree method and that, this is the only way to teach a lesson to the culprit. False encounters are also justified by the police on the same line of arguments that normal legal procedure cannot deal with them effectively. None of the above justifications is, however, convincing.

In recent past, alarming increase in terrorist activities, communal riots, gangwars and underworld activities have added fuel to the fire and tremendously affected the behaviour and work culture of police. No doubt, criminal activities of aforementioned groups are clearly crime against humanity and it is the obligation of the state as well as police to investigate, prosecute and punish these crimes. Relying on the logic that if they go by law and fundamental rights, the crimes would go unpunished and ultimately society would suffer, the police handles these cases in their own manner and methods. By and large, the public also expects the police to deal with such criminals in an effective manner so that criminal activities of such groups could be eradicated. But, a civil society governed by the 'rule of law' can hardly permit it as it is considered to be the 'law of the jungle'. Such a society postulates that evil could not be eradicated by evil in any respect. Terrorism can never be combated by state terrorism as it is legally impermissible under both the Constitution of India and international human rights law. Combating of terrorism and other criminal activities, therefore, must be within legal framework and any form of torture for extracting confession or any kind of information would neither be just nor fair and reasonable and therefore, being violative of article 21, would be impermissible.⁴

In India, we follow the British system of criminal justice, which postulates that every accused is a human being, innocent in all respects and every charge against him should be proved beyond all reasonable doubts.⁵ However, in many cases police overreacts and arrests an accused informally, detains him illegally and humiliates, tortures and harasses unnecessarily. Moreover, officers and men meant to abide by the law and committed to enforce them, often violate the basic and fundamental laws insuring human dignity and individual freedom. And, if fences

3. *Infra* note 28.

4. *D.K. Basu, supra* note 1.

5. *Supra* note 2 at 62.



start to swallow the crops, no scope will be left for survival of the legal system, truth and justice.

To conclude, custodial atrocity means and includes any act which affects human dignity in any respect. All forms of police atrocity and brutality directed against persons in their custody fall within the ambit of custodial crimes. It tarnishes the face of humanity as well as civil society governed by the 'rule of law'. It is a naked violation of human dignity and strikes a severe blow at the face of rule of law which necessitates that executive powers should not only flow from the law but it should also be limited by law.

Causes

Crime is a result of various socio-economic factors over which police has no control. But, because of this prevalent notion that efficiency and inefficiency of police is a responsible factor for increasing or decreasing rate of crime, they are singled out for blame, whenever crime increases. However, the functioning of police entails various legal impediments. Besides, they are over-loaded with duties and ill-equipped in terms of resources to work.⁶ In spite of these constraints, they are expected to detect criminals and thereby solve the cases quickly.

Police can legally detain a person in custody only for 24 hours. Beyond that, custody requires permission of the court. But, the court often shows its reluctance in granting any further police remand. Besides, because of procedural flaws in the criminal justice system, sometimes, hardened criminals are bailed out quickly and thereafter they escape and ultimately get away scot free and unpunished. Tracing them again becomes a very difficult task. To counter such a situation, police adopts a new unwritten procedure, not sanctioned by law, whereby a crime suspect is picked up and detained many days without informing his relatives and without seeking permission of the court. Even if the detenu dies, police declines to own responsibility as there is no evidence to show that he died in police custody.⁷

Besides, there are several other reasons of custodial brutality:⁸

- (i) Police feel themselves to be immune—they cannot be held accountable for whatever they do;
- (ii) use of third-degree method is considered to be their service right and accepted part of their profession;
- (iii) political and bureaucratic pressure/influences and interference in their work;
- (iv) it is a short-cut to get quick result;
- (v) ambition to be classed as

6. Sankar Sen, *Human Rights in a Developing Society* 94 (1998).

7. *Id* at 95.

8. S.R. Majumdar, "Lawlessness in Enforcement" *Police Research and Development* Jan – Mar 1995.



good and tough investigators; (vi) lack of time for proper investigation; (vii) collusion with rich, influential and dancing to their tune; (viii) erring police officials go unpunished because of lack of evidence; (ix) inadequate training, lack of knowledge and experience in the field of scientific interrogation of accused; (x) lack of effective supervision/ inspection of police stations by the superior officers; and (xi) poor pay scale, poor service condition and lack of better promotional avenues etc.

Custodial atrocity and brutality is flourishing not only because of official negligence but because of incompatible demands and expectations of the society to take tough action (including encounters), not sanctioned by law. Even a large section of the society feels that despite their excesses, police carries out a necessary and unpleasant task of preserving and protecting the state and the society.⁹ However, national and international instruments strictly prohibit such type of brutal action.

International instruments

Torture has been considered as the most barbarous act against humanity as it constitutes the very denial of the essence of human rights. Every human being has personality of his own, which should be respected. Freedom from torture and other cruel, inhuman, degrading treatment or punishment, proclaimed as indefeasible right of human beings is enshrined in the various international legal instruments on human rights. Apart from the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, article 2 of the Declaration on Protection of all Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1975 declares 'torture' as an offence against human dignity and as a violation of human rights and fundamental freedoms proclaimed in Universal Declaration of Human Rights. The states are directed under article 3, not to 'promote or tolerate' any form of torture even in exceptional circumstances such as state of war or a threat of war or internal political instability or emergency. Article 4 clearly mandates the state parties to take effective measures to prevent all forms of torture and article 6 casts an obligation on the states to keep a systematic review of the interrogation methods and practices as well as arrangements for the custodial cases.

Following the same, Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly on December 10, 1984 and which came into force on June 26, 1987, proclaims that the prohibition against torture is absolute

9. *Supra* note 6 at 96.



and no exceptional circumstances, whatsoever, including war or public emergency or order from superior authority or public servant, can be invoked as a justification of torture.¹⁰ The state parties are, therefore, obligated to prevent and punish not only acts of torture but also other acts of cruel, inhuman, degrading treatment or punishment, whenever freedom against these acts is assailed by or at the instigation of or with the tacit consent of public authorities.

Position in India

In tune with the international human rights instruments against torture, the Constitution of India also emphasizes respect and honour of human dignity and fundamental freedoms thereof. The preamble, fundamental rights, directive principles of state policy and various other provisions stand testimony to the protection of human rights. Beginning with the preamble, the Constitution assures every citizen the dignity of the individual and guarantees to secure justice - social, economic and political, equality of status and opportunity. Article 21 guarantees the right to life and personal liberty, of which deprivation can only be in accordance with the procedure established by law, which must be just, fair and reasonable. Right to life and personal liberty, as per its expanded meaning, includes the right to live with human dignity and thus, would also include within itself a guarantee against torture and assault by the state or its functionaries.¹¹ Thus, the right against custodial violence arises from article 21 of the Constitution. Besides, article 20(3) clearly mandates that any person accused of an offence shall not be compelled to be a witness against himself. Article 22 guarantees protection against arrest and detention in certain cases and lays down that an arrested person shall not be detained in custody unless he is, as soon as may be, informed of the grounds of his arrest. Whereas, clause (2) of this article directs that an arrested person or person detained in custody shall be produced before the nearest magistrate within a period of 24 hours of his arrest excluding the period of journey. Right to life and personal liberty has, thus, acquired the status of a sacred and cherished right under the Constitution and cannot be denied to anyone, even to convicts, undertrials and detenu etc. except according to procedure established by law.

In consonance with the constitutional mandate, a number of statutory provisions also seek to protect persons from being tortured.¹² These provisions clearly deal with the powers of arrest of a person and

10. Art. 2 of the U.N. Convention against Torture, 1984.

11. *D.K. Basu*, *supra* note 1 at 426.

12. See, for example, chap. V and s.167 of the Criminal Procedure Code, 1973.



safeguards which are required to be followed to protect the interests of an arrested person.

III Judicial Response to Custodial Atrocities

The police in independent India persisted with the colonial frame of mind. In discharge of their duty to maintain law and order and with a view to extracting evidence and gathering information during the course of investigation, the police often use third-degree method, which has been considered as a flagrant violation of law. Executive as well as administrative reluctance to prevent them from doing so has added 'fuel to the fire'. In such a situation the 'ray of hope' rests on the judiciary, as it has always been considered to have an overriding duty to maintain public confidence in the administration of justice and to vindicate and uphold the 'majesty of the law'. Being the custodian and protector of fundamental rights, the judiciary has, of course, taken serious and prompt action against the wrongdoers and has controlled their unlawful activities of custodial violence to a large extent by holding that police cannot be a law unto themselves expecting others to obey the law. For, if a law enforcer becomes a law breaker, it breeds not only contempt for law but also invites every man to become a law unto himself. The Supreme Court in *Nandini Satpathy*¹³ clearly held that an investigator should possess the qualities of patience and perseverance and must avoid the use of third degree as it has become outlawed.¹⁴ It is a short-cut method which unnecessarily brutalizes the police and makes them less zealous in search of an objective evidence as it does involve not only flagrant violation of law but also involves the danger of false confession.

Dealing with the role of the police, the apex court again in *Delhi Judicial Service Association v. State of Gujarat*¹⁵ condemned the arbitrary and excessive use of force by the police and observed thus:¹⁶

The main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect citizens' life and property. The law enjoins the police to be scrupulously fair to the offender and the Magistracy is to ensure fair investigation and fair trial to an offender. The purpose and object of Magistracy and police are complementary to each other. It is unfortunate that these

13. *Nandini Satpathy v. P.L. Dani*, AIR 1978 SC 1025.

14. *Ibid.*

15. (1991) 4 SCC 406.

16. *Id.* at 454-55.



objectives have remained unfulfilled even after 40 years of our Constitution. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.

An example of serious actions taken by the judiciary could be seen in *Joginder Kumar v. State of U.P.*,¹⁷ where the Supreme Court held that no arrest could be made unless police officer is, apart from his power to arrest, able to justify it. Considering the arrest and detention is incalculable harm to the reputation and self esteem of an individual, it further held that except in heinous offences, an arrest must be avoided.¹⁸ Thus, unless condition so requires to enable police to prevent the offences as well as to investigate the crimes properly, no arrest can be made. With a view to minimizing the cases of illegal detention, the apex court expanded the meaning of articles 21 and 22 of the Constitution and formulated the following directives:¹⁹

- i. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and whereabouts of his detention.
- ii. The police officer shall inform the arrested person when he is brought to the police station of this right.
- iii. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from articles 21 and 22 (1) and enforced strictly.

Apart from the above formulation, the apex court commanded the magistrates, before whom the arrested person is produced, to satisfy themselves that these requirements have been complied with. These requirements, according to the court, shall be in addition to the rights of the arrested persons found in various police manuals. To ensure compliance of aforesaid requirements, the director-generals of police of

17. AIR 1994 SC 1349.

18. *Id.* at 1354.

19. *Ibid.*



all the states were directed to issue necessary instructions requiring due observance of these requirements along with maintaining the record of the reasons of arrest by the arresting police officer.²⁰

It is necessary to examine how far the directives of the apex court have been complied with as the increasing events of custodial atrocities including custodial death show that the police personnel have not only flouted the legal and constitutional norms but have also flouted the norms set by the apex judiciary. However, mere formulation of guidelines and safeguards would not be sufficient. Only lofty phrases on constitutional rights and quotations from international norms would have no effect on the persons whose conduct requires to be corrected.²¹ Considering this aspect seriously, the Supreme Court in *D.K. Basu v. State of West Bengal (I)* warned that:²²

Failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

Apart from this warning, the Supreme Court laid down a number of requirements to be followed strictly in all cases of arrest and detention.²³ These requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions issued by the courts from time to time safeguarding the rights and dignity of the arrestee. Emphasizing on circulating it to every police station of the country and communicating it to the people through print and electronic media channels, the apex court opined that creating awareness about the rights of the arrestee would be a step to combat the evil of custodial crime and bring in transparency and accountability.²⁴

However, the aforesaid requirements have not been complied with in letter and spirit by the state governments. Taking it seriously, the Supreme Court in *D K. Basu v. State of W.B. (II)*²⁵ again directed the states to strictly comply with the same, observing that “the state governments ought to know that protection of human rights is their primary constitutional obligation and not the sole concern of this court

20. *Ibid.*

21. See Ruma Pal, *supra* note 1 at 106.

22. *D.K. Basu, supra* note 1 at 436-37; see also *Vinesh Pundir v. State of UP*, (2003) SCC (Cri) 1244.

23. *Ibid.*

24. *Id.* at 437.

25. (2004) SCC (Cri) 1159.



alone.”²⁶ Moving a step forward, the apex court in *D.K. Basu v. State of W.B. (III)*²⁷ directed the states’ human rights commissions also to monitor the compliance of the requirements issued by the court previously by taking all the necessary steps including surprise checking.

Alarming increase in the cases of torture, assault and death in police custody²⁸ and non-availability of direct evidence to punish culprits in such cases have been a vexed problem indeed as the investigation into such matters is conducted by the custodians themselves or by the members of their fraternity, who try to circumvent the relevant evidences and also try to misguide the courts by their fabricated story. It is, therefore, of utmost necessity that in the cases of custodial atrocity, an objective and independent enquiry should be made. Keeping it in view, the Supreme Court in *Secretary, Hailakandi Bar Association v. State of Assam*²⁹ directed the CBI to register and investigate the instant case of custodial death by holding that “it is futile to expect an independent and wholly objective investigation by the state police. Even otherwise, the people will have little confidence in the investigation, no matter how honest and objective the investigation be.”³⁰ Again in *Mrs. Paramit Kaur v. State of Punjab*,³¹ where serious allegations were leveled against the officers of the police, it was held that it would be better and in the interest of justice to hand over the investigation to an independent authority.

Following the same, the Supreme Court in *Ajab Singh v. State of UP*,³² where the police explanation of a custodial death was a concocted story, directed the CBI to register the case and conduct an investigation into the circumstances of custodial death. It also directed the CBI to complete investigation expeditiously and file a copy of the investigation report in the court.

Proving criminal liability of the custodian culprit is another problem in the area as, barring few exceptions, the burden of proof lies on the prosecution. Because of this procedural lacuna, the number of acquittals of custodian offenders has been increasing. For, it is the police officers alone who can give evidence regarding the circumstances of custodial atrocities and, as stated above, police often try to circumvent the relevant evidence and mislead the courts. Consequently, custodian offenders go

26. *Ibid.*

27. (2004) SCC (Cri) 1198.

28. For detailed data see, *Annual Reports of the National Human Rights Commission*, New Delhi and website: <http://nhrc.nic.in>; see also *Annual Reports of the National Crimes Record Bureau*, New Delhi.

29. (1995) Supp (3) SCC 736.

30. *Id.* at 740.

31. JT (1995) 8 SC 418.

32. (2000) 3 SCC 521 at 524.



scot free due to paucity of evidence. Taking a serious note of this situation, the apex court in *State of UP v. Ram Sagar Yadav* observed that:³³

The law as to the burden of proof in such cases may be reexamined by the legislature so that handmaids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protection.

This recommendation of the apex court was subsequently referred to the Law Commission of India, which in its 113th Report recommended amendment of the law of evidence by incorporating a new section, section 114-B, in the Indian Evidence Act, 1872 providing that if there is evidence to show that the injury was caused to a person, when he was in police custody, “the Court may presume that the injury was caused by the police officer having custody of that person during that period”. This recommendation which was made in 1985 is still gathering dust, despite the Supreme Court’s several reminders to Parliament to give a serious thought to it.³⁴ The exaggerated adherence to and insistence upon proving the guilt of custodian offender beyond every reasonable doubt often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. Ultimately, the society suffers and due to want of punishment, the criminal gets encouraged.³⁵ Suggesting the subordinate judiciary to change their outlook and attitude regarding cases of custodial crimes, the Supreme Court held that the courts must deal with such cases in a realistic manner and with the sensitivity they deserve so that the truth may be found and the guilty may not escape, otherwise people may tend to gradually loose their faith in the judiciary, which will be a sad day.³⁶ Speaking for the court in *Zahira Habibulla H. Sheikh v. State of Gujarat*,³⁷ Arijit Pasayat J has rightly observed:³⁸

When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice delivery system of the country itself.

33. AIR 1985 SC 416 at 421.

34. *State of M.P. v. Shyam Sunder Trivedi*, (1995) 4 SCC 262; *D.K. Basu, supra* note 1; *Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble*, (2003) 7 SCC 749; *Munshi Singh Gautam v. State of M.P.*, AIR 2005 SC 402 at 405.

35. *Ibid.*

36. *Ibid.*

37. (2004) SCC (Cri) 999.

38. *Id.* at 1030.



The judiciary has not only protected the human rights of people but also has assured the citizens that they live under such a legal system which aims to protect their interests and preserve their rights. The traditional theory of 'sovereign function', denying the liability of the state for illegal arrest and detention, has now been given up as the judicial grammar of interpretation as article 21 has undergone a profound change since *Maneka Gandhi* case.³⁹ Courts are now not hesitant to grant compensation to the victims or their heirs in case of custodial death.⁴⁰ However, in almost all the cases, courts have directed the state to recover the amount of compensation from the wrongdoers. Relying on article 9(5) of the International Covenant on Civil and Political Rights, which guarantees an enforceable right to compensation to the victims of unlawful arrest and detention, A.S. Anand J (as he then was) in his concurring opinion in *Nilabati Behera v. State of Orissa*⁴¹ held that the duty on the part of the state is strict and admits of no exceptions. The wrongdoer is accountable and the state is responsible if the person in police custody is deprived of his life except according to procedure established by law. Thus, it is a sacred duty of the police authorities to ensure that the citizen in its custody is not deprived of his right to life as an arrested person is not denuded of his fundamental rights under article 21 of the Constitution. Only such restrictions as are permitted by law can be imposed on the enjoyment of the fundamental rights of the persons in custody.

IV Concluding Observations

The practice of policing and human rights are closely interrelated. Policing is one of the means through which the state seeks to meet its obligation to protect some of the fundamental rights *viz.*, right to life, liberty and security of persons. Effective enforcement of law and order will enable people to enjoy fully, not only their civil and political rights but also social and economic rights. But thoughtless and unlawful policing can suppress these rights. It is being increasingly felt that human

39. AIR 1978 SC 597.

40. *Khatri v. State of Bihar*, AIR 1981 SC 928; *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086; *Sebastian M. Hongray v. Union of India*, AIR 1984 SC 1026; *Bhim Singh v. State of Jammu and Kashmir*, AIR 1986 SC 494; *People's Union for Democratic Rights v. Police Commissioner* (1989) 4 SCC 730; *SAHELI, A Women's Resources Centre v. Commissioner of Police, Delhi*, AIR 1990 SC 513; *Nilabati Behera v. State of Orissa*, (1993) 2 SCC 746; *D.K. Basu supra* note 1; *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568; *Ajab Singh v. State of UP* (2000) 3 SCC 521; *Hussain v. State of Kerala*, (2000) 8 SCC 139; *S.A. Gafar Khan v. Vasant Raghunath Dhoble*, (2003) 7 SCC 749, etc.

41. (1993) 2 SCC 746 at 767.



rights are protected by the law on the one hand, and are often at risk from the law enforcers, on the other. In the name of law enforcement, custodial atrocities, which have now become a global phenomenon, cannot be accepted and tolerated in a democratic society governed by the 'rule of law'. National and international legal instruments have also created binding obligations to protect human rights and prevent all forms of atrocities.

No doubt, police play a vital role in safeguarding the life, liberty and freedom of people. They can, therefore, question anybody during the course of investigation of crimes. However, such investigation must be conducted in a humanitarian manner and by lawful means and methods. They are not expected to misuse their powers and harass the people in their custody, whenever they want, on the pretext of law enforcement. The end cannot justify the means adopted irregularly, illegally and arbitrarily. But unfortunately, police often use unlawful methods in conducting investigations and torture the persons in their custody, often resulting in severe physical injuries or death of the arrestees. They must be aware that custodial death causes irreparable damage to the reputation of police and erodes their credibility in the eyes of the public besides the tragic consequence of people losing faith in the legal system.

Alarming increase in cases of custodial torture, assault and death has invited the attention of the judiciary also. With a view to ensuring that public bodies or officials do not act unlawfully and perform their public duties properly, particularly, where the fundamental rights of citizens are involved, the judiciary has given enough directions to safeguard the fundamental rights and freedoms of individuals, even those of the accused. The courts have played a balancing role between the societal need of crime detection through effective law enforcement and constitutional rights which an accused possesses. The judiciary has served a useful public purpose to expose and stop the use of third degree methods by the police on the persons in their custody, when political and administrative channels have become callous and indifferent.

It is for the implementing and supervising authorities to ensure that these guidelines are strictly complied with and the irresponsible and inhuman police behaviour is done away with. It is of utmost necessity to sensitize the police personnel by giving them proper and scientific training so that they do not resort to third degree method of torture to elicit and extract confessions. After all, human rights should be as much cherished by the state and its functionaries as by the citizens. Besides, Parliament may seriously consider the recommendation made by the Law Commission in its 113th Report and, as suggested, amend the Indian Evidence Act so as to transfer the onus of proof of innocence on the police in cases where the evidence shows that an arrestee suffered an



injury during police custody. This provision is likely to instill some fear in the minds of police officials who tend to take law in their own hands. However, any number of legislative reforms and judicial activism may not be successful in preventing and punishing the persons responsible for custodial atrocities unless major police reforms are undertaken. Wide-ranging systematic reforms are, therefore, required. The police has to be insulated from the 'extraneous influences'. Remedies for custodial atrocities can be prescribed only after proper diagnosis of the malady, and of the socio-economic, psychological, and political factors involved. Only a civil society can ensure a civilized police system.

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