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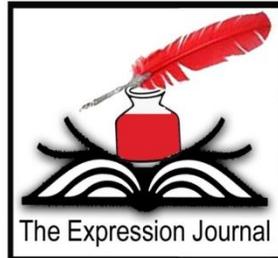


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RIGHT AGAINST TORTURE AND CUSTODIAL VIOLENCE

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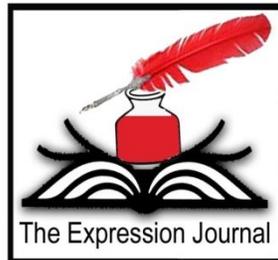
Abstract

Ensuring freedom and maintaining dignity of an individual is the fundamental concern of each democratic rule state. Living in this time of globalization, any occurrence violating human rights is of critical significance to the world at large. Growing ambit of human rights on one hand and expanding checks of crime rate on other hand represents a challenge to all law-implementing apparatuses to strike a balance between the two. Torture in custody on hands of defenders of law i.e. police is considered to be a harshest type of human rights infringement. Perseverance of human rights can be ensured just by controlling this superfluous insidiousness. The articulation "torture" has neither been characterized in the Constitution of India nor in some other corrective law. Issue of custodial torture is worry of global network and an all-inclusive subject. Subsequently, custodial forcefulness, enduring and mishandle by police specialist are not impossible to miss to this nation but rather an across the board wonder. India, being the greatest majority rule government of the world, implanted in its laws, insurance of life and individual freedom as one of the key rights. In any case, presence of instances of custodial torment and third degree upon under-trails and suspects is a vital piece of examination. Thus in this paper, the author aims to look at Right against Torture and Custodial Violence.

Keywords

Human Rights, Violence, Protection, Constitution.

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RIGHT AGAINST TORTURE AND CUSTODIAL VIOLENCE

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“Torture is a wound in the soul so painful that sometime you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself”

Torture is not defined in any law but in D.K. Basu Case (D.K. Basu v. State of W.B.A.I.R> 1997 SC 610) the Supreme Court held torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.

In the case of Kishor Singh the court held,

“Injustice anywhere is a threat to justice everywhere. Whatever affects one directly affects all directly, Nothing is more cowardly and unconscionable than a person in police custody being beaten up and nothing inflicts a deeper wound on our constitutional culture than a State official running a berserk regardless of human rights. We believe the basic pathology which makes police cruelty possible will receive Government’s serious attention. Who will police the police? What psychic stress and social deprivation of the constabulary’s life-style need corrective healing? When will ‘wits, not fists’ become police kit? When will the roots of ‘third degree’ be plucked out and the fresh shoots of humanist respect put out? We make these observations in the humane hope that Article 21, with its profound concern for life and limb, will become dysfunctional unless the agencies of the law in the police and prison establishments have sympathy for the humanist creed of that Article.

Kishor Singh v. State of Rajasthan AIR 1981 SC 625

In Kharak Singh v. State of U.P., the Court held that Clause (b) of regulation 236 of the U.P. Police Regulations, which authorizes domiciliary visit with it was violative of Article 21 of the Constitution and was held to be unconstitutional as it was held that the

word 'life' in Article 21 means not merely the right to continuance of a person's animal existence but a right to possess each of his organs, his arms and legs.

The Apex Court in *Reghubir Singh v. State of Haryana* held that the..... society was deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril, when the guardians of law gore human rights, to death.... This development is disastrous to our human rights awareness and humanistic constitutional order.

In *Khatri v. State of Bihar*, the Supreme Court had tacked the blinding of undertrials by police by piercing their eye-balls with needles and pouring acid in them. The case illustrated key aspects of the pattern of torture, the sanction of torture by State and local judicial authorities, the routine concealment of torture, the failure to conduct proper inquires and the inordinate length of judicial proceedings. The Court described the issues involved to be of the greatest constitutional importance involving as they do the exploration of new dimension of right to life and personal liberty. It was 10 years after the blinding of undertrials the Court quashed the charges against the victims.

In *Bhim Singh v. State of J & K*, an MLA of assembly was arrested but he was not produced before a Megistrate. The Supreme Court found this act of the J&K police to be a gross violation of Article 21 and the Court had also awarded a compensation of Rs. 50,000.

In *NilabatiBehra v. State of Orissa*, the Supreme Court found that the petitioner's son was killed in police custody due to torture by the police, when he was arrested on a charge of petty police and declared that any person whose fundamental rights have been violated by State action, can move either the High Court under Article 226 or the Supreme Court under Article 32 for monetary compensation. In *Saheli v. Commissioner of Police*, the Supreme Court has held that even when a public interest litigation is initiated challenging the police action where there is a loss of life and the action of the police is wholly unjustified and in excess of the power, adequate and reasonable compensation can be awarded. Again in *D.K. Basu v State of West Bengal*, the Supreme Court observed.

"Custodial violence, including torture and death in the lock up, strikes a blow at the rule of Law, which demands that the power of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is matter of concern. IT is aggravated by the fact that it is committed by person who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authorized 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. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issue are fundamental"

Recently, in *Abdul Gaffar Khan v. VasantRaghunath Dhole*, the SC observed

“Custodial violence, torture and abuse of police power are not peculiar to this country of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergency of a world-wide trend of protection and guarantee of certain basic Human Rights stipulates in Article 5 that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devises adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples’ rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens rights.

The court further observed that Article 21 which is one of the luminary provisions in the Constitution of India, 1950 (in short the “Constitution”) and is a part of the scheme for fundamental rights occupies a place of pride in the Constitution. The article mandates that no person shall be deprived of his life and personal liberty except according to the procedure established by law. This sacred and cherished right i.e. personal liberty has an important role to play in the life of every citizen. Life or personal liberty includes a right to live with human dignity. There is an in-built guarantee against torture or assault by the State or its functionaries. Chapter V of the Code of Criminal Procedure, 1973 (for short the ‘Code’) deals with the powers of arrest of persons and the safeguards required to be followed by the police to protect the interest of the arrested person. Articles 20 (3) and 22 of the Constitution further manifest the Constitutional protection extended to every citizen and the guarantees existence. It is, therefore, difficult to comprehend how torture and custodial violence can be permitted to defy the rights flowing from the Constitution. The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of Rule of Law and Administration of Criminal Justice System. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This court has in a large number of cases expressed concern at the atrocities perpetuated by the protectors of law.

References:

1. Aggarwal, H.O., International Law and Human Rights, Central Law Publication, Allahabad, 13th edn., 2006.
2. Ananthachari, Refugees in India: legal framework, International Law yearbook on International Humanitarian and Refugee Law, Indian Society of International Law Library, New Delhi, 2001.
3. Armstrong, A.H., An Introduction to Ancient Philosophy, Cambridge Press, London, 1996.
4. Austin, John, The Province of Jurisprudence Determined, Cambridge University Press, 1995.
5. Bajwa, G.S., The Police Administration in India: Indian Police Administration, Anmol Publication, New Delhi, 1978.
6. Bansal, V.K., Right to Life and Personal Liberty, Deep and Deep Publication, Pvt. Ltd., New Delhi, 1986.
7. Barnes and Teeters, New Horizons in Criminology, Prentice Hall, New York, 1959.
8. Basu, D. D., Human Rights in Constitutional Law, Wadhwa and Co., Nagpur, 1994.
9. Baxi, Upendra, The Crisis in the Indian Legal System, Vikas Publishers, New Delhi, 1982.
10. Bertil, Duner, An End to Torture – Strategies for its Eradication, Zed Books, London, 1998.
11. Boulesbaa, Ahcene, The UN Convention on Torture and the Prospects for Enforcement, Nijhoff Publishers, The Hague, 1999.
12. Burgers and Danelius, The United Nations Convention against Torture, MartinusNijhoff, Dordrecht, 1988.
13. Carpenter, W.S., Foundation of Modern Jurisprudence, Little Brown Co. Boston, 1968
14. Chadha, M.B., The Police in India, Atlantic Publishers and Distributors, New Delhi, 1997.
15. Chakraborty, Dipangshu, Atrocities on Indian Women, APH Publishing Corporation, New Delhi, 1999.
16. Kapoor, S.K. and Nagendra Singh, International Law, Central Law Agency, Allahabad, 1998
17. Kirchhoff, Gerd Ferdinand, International Debates of Victimology, WSV Publishers - Printed in Great Britain, 1994.
18. Krishna Iyer, V.R. Human Rights and Inhuman Wrongs, D.K. Publishers, New Delhi, 1996.
19. Krishna Iyer, V.R., Human Rights and the Law, B.R. Publishing Corporation, New Delhi, 1986.
20. Krishna Iyer, V. R., Human Rights and Law, Vedpal Law House, Indore, 1984 .

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21. Krishnamurthy, S., Human Rights, Bureau of Police Research and Development, Government of India, New Delhi, 2006.
22. Krishnamurthy, S., Human Rights and the Indian Police, R. R. Publishers, Bangalore, India, 1996.
23. Leuterpacht, H., International Law and Human Rights, Archon Books, London, 1968
24. Madan, J.C., Indian Police, Uppal Publishing House, New Delhi, 1980. Mases Moshkuwitz, The Politics and Dynamics of Human Rights, Oceane Publication Inc. Dobbs Ferri, New York, 1968.
25. Mayer, J., The Dark Side: The Inside Story of How the War on Terror Turned into a War of American Ideals, New York: Doubleday, 2008.
26. Mehra, Ajay Kumar, Police in Changing India, Usha Publication, Delhi, 1985.
27. Mehta, P.L. and NeenaVerma, Human Rights under the Indian Constitution, Deep and Deep Publication, Pvt. Ltd., New Delhi, 1999.
28. Mehta, P.L. and NeenaVerma, Human Rights under the Indian Constitution: The Philosophy of Judicial Gerrymandering, Deep and Deep Publication Pvt. Ltd., New Delhi, 1999.
29. Metharaj, Begum S., District Police Administration (A Case Study), Anmol Publications, New Delhi, 1996.
30. Misra, Shailender, Police Brutality, Vikas Publishing Pvt. Ltd., New Delhi, 1986.
31. Nowak, Manfred and Elizabeth McArthur, United Nations Convention against Torture: A Commentary, Oxford University Press, 2008.
32. Pachauri, S.k., Prisoners and Human Rights, APH Publishing Corporation, New Delhi, 1999.

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