

Custodial dignity

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THE very idea of a human being in custody save for protection and nurturing is an anathema to human existence. The word custody implies guardianship and protective care. Even when applied to indicate arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty – an inhuman trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation; a senseless exhibition of superiority and physical power over the one who is overpowered or a collective wrath of hypocritical thinking.

Dignity – a birth right

Being fortunate to have been born on the human rights day it becomes vivid, not by memory but by instincts and embryonic experience, that the darkest formative cell that nurtured with warmth and care had the most safe comfortable, carefree and above all fearless living – a custodial dignity that precedes every human born – a dignity infused in the human system that must revolt against its non-recognition in any form by reflex action. This ethereal gift is zealously guarded by all within and most wantonly disregarded by most without.

Attacks on human dignity

The attack on human dignity can assume any form and manifest itself at any level. It is not merely the negative privilege of a crude merciless display of physical power by those who are cast in a role play of police functioning, but also a more mentally lethal abuse of position when springing from high pedestals of power in the form of uncalled for insinuations, unjustified accusations, unjust remarks, menacingly displayed potential harm, that can strike terror, humiliation and a sense of helplessness that may last much longer than a mere physical harm and which brook no opposition.

The area of human dignity is in one's sacred self and that field is quite apart and distinct from the field of considerations of rights and duties, power and privileges, liberties and freedoms or rewards and punishments wherein the laws operate. If a person commits any wrong, undoubtedly he should be penalized or punished, but it is never necessary to humiliate him and maul his dignity as a human being.

IV. Better deal even to Beasts

Eric, a five-metre, 550kg. Man-eating saltwater crocodile at the Australian Reptile Park near Sydney prominently snapped at a chicken for his 54th birthday, occupied a large center space in a daily's international page on 3rd October, 2000.

Even beasts in custody get a better deal. The most ferocious of man-eaters when caged are regularly fed and their health is a cause of great concern and anxiety to many. After all, we do possess the sensitivity to realize that the mother-nature has meant it that way by instilling in the system of even animals, instincts that are inviolable. That is why the onlooker appreciates the majestic coat and gait of a caged man-eater and anyone who harms it knows too well that he can do so with impunity to satiate his ego or sheer wantonness that would otherwise freeze or melt.

V. The Universal Concern

(1) The Universal Declaration of Human Rights 1948, adopted and proclaimed by the General Assembly Resolution 217A(III) of 10th December, 1948 declared in the preamble that recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Article 1 proclaimed that all human beings are born free and equal, in dignity and rights. In Article 3 it proclaimed that everyone has the right to life, liberty and security of person, and in Article 5 that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The presumption of innocence of a person charged with a penal offence until proved guilty as contained in Article 11(a) is meant to insulate him against any high-handed treatment by the authorities dealing with him in the matter.

(2) Article 7 of the International Covenant on civil and Political Rights, 1966 adopted by the General Assembly resolution dated 16th December, 1966 covenanted that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Under Article 10 of the said Covenant all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person and the accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. The minimum guarantees to which everyone charged with a criminal offence, is entitled in full equality covenanted in Art. 14(3), inter-alia, provide that no shall be compelled to testify against himself or to confess guilt, which obviously will rule out use of force of any kind on a person accused of any crime.

(3) The American Convention of Human Rights 1969 which came into force in July, 1978, declares under Article 4(1) that every person has the right to

have his life respected and this right shall be protected by law. Under Article 5, the right of every person to have his physical, mental, and moral integrity respected is recognized and it is covenanted between the States who are parties to this convention that no one shall be subject to torture or to cruel, inhuman, or degrading punishment or treatment and that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Right to human treatment recognized by Article 5 cannot be suspended even in time of war, public danger, or other emergency situation, as declared in Article 27 of this Convention.

The Constitutional Concern

Respect for human dignity is thus not a matter for any deep study in axiology for an estimate of comparative values in ethical, social or an aesthetic problem but a matter of acknowledging a simple truth already recognized by our national document when its opening chant exudes the cultural nobility of a fraternity that assures the dignity of the individual. The Constitution recognizes it to be fundamental in the governance of the country that the State shall direct its policy to secure conditions of freedom and dignity and insulates against all forms of tyranny against mind and body and their freedom to grow fearlessly. All custodial safeguards in the constitutional and other laws are meant to protect human dignity and shun barbaric approaches. This is why no person accused of any offence shall be compelled to be a witness against himself [Art.20(3), a person is entitled to know why he is arrested for being detained in custody and to consult a legal practitioner of his choice [Art. 22(1), there is prohibition of traffic in human beings and forced labour (Art. 23), and, above all, that mother of all rights, the right to protection of life and personal liberty (Art. 21). The right to live with human dignity enshrined in Art. 21 derives its life and breath from the directive principles of State policy particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 as held by the Supreme Court in *Bandhua Mukti Morcha* case. [see (1984)3 SCC 161 &(1991) 4 SCC 417].

Handcuffing

Handcuffing of undertrial prisoners by escorts taking them from the jail to court and back in absence of there being a compulsive need to do so has been disapproved by the Supreme Court in *Prem Shanker Shukla's* case (1980) 3 SCC 526 wherein Krishna Iyer and Chinnappa Reddy, JJ. Expressed in no uncertain terms that to handcuff is to hoop harshly and to punish humiliatingly and that it is necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despot and demoralizing to humiliate a man by manacled him. The minimal freedom of movement, which even a detainee is entitled to under Art. 19, cannot be cut down by application of handcuffs. In his concurring judgement R.S.Pathak J. observed that a malicious use of the power to restrain a person by handcuffing him or otherwise can bring Sec. 220 of the Indian Penal Code into play. The object of imposing restraint on the person of the prisoner while in continued custody is to prevent his escape and that object itself defines at once the bounds of the power to keep the person in custody.

Guarantee against torture and assault

The arrest of a person suspected of crime does not warrant any physical violence on the person or his torture. But, when the captive exercises his fundamental right to silence against self-incrimination (Art. 20(3) during his interrogation, the police often abuse their authority by use of criminal force to extort information. The tyrannical way of custodial interrogation that exposes the suspect to the risk of abuse of his person or dignity has prompted the Supreme Court to ordain that interrogation should not be accompanied with torture or use of "third degree" methods. (*Kartar Singh V. State of Punjab*, (1994) 3 SCC 569). The constitution as well as the statutory laws condemn the conduct of any official in extorting a confession or information under compulsion by using any third degree methods. A confession to police officer cannot be proved as against a person accused of any offence (Sec. 25 Evidence Act) and confession caused by threats from a person in authority in order to avoid any evil of a temporal nature would be irrelevant in criminal proceedings as, inter-alia, provided in Sec. 24 of the Evidence Act. Sections 330 and 331 of the Indian Penal Code provide for punishment to one who voluntarily caused hurt or grievous hurt to extort the confession or any information which may lead to detection of an offence or misconduct. The expression "life or personal liberty" in Article 21 includes a guarantee against torture and assault even by the State and its functionaries to a person who is taken in custody and no sovereign immunity can be pleaded against the liability of the State arising due to such criminal use of force over the captive person. As held by the Supreme Court in *D.K.Basu V. State of W.B.* (1997) 1 SCC 416 "custodial torture" is a naked violation of human dignity and a degradation which destroys, to a very large extent human personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backwards – flag of humanity must on each such occasion fly half-mast. The convicts, undertrials, detainees and other persons in custody cannot be denied the precious right of the right to live with human dignity included in the expression "life or personal liberty", except according to the procedure established by law by placing such reasonable restrictions as are permitted by law. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Art. 21, whether it occurs during investigation, interrogation or otherwise. Using any form of torture for extracting any kind of information would neither be right nor just nor fair and would therefore offend Art. 21. A crime-suspect can indeed be subjected to a sustained and scientific interrogation in accordance with law but he cannot be tortured or subjected to third-degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. "State terrorism" is no answer to combat terrorism.

The Apex Court's Concern

The Concern of the Apex Court against custodial violence materialized into the safeguards, it has devised, breach of which would warrant departmental action on failure of the official concerned to comply with any of the eleven requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf, and also render such officer liable to be punished for contempt of Court (*D.K.Basu V. State of W.B.*, (1997)1 SCC 416). These requirements ensure, the record of the police personnel arresting and handling the arrestee, the record of arrest, the record of his whereabouts during detention, giving of information to his relative or acquaintance having interest in his welfare, periodic medical examination of the arrestee to ascertain

whether any force is used and the state of his health which in custody, preparation of ¶Inspection memo¶ recording injuries if any on the arrestee so that the events of custodial violence can be easily detected and the perpetrations are duly dealt with. These requirements which flow from Art. 21 and 22(1) of the Constitution are ordered to be strictly followed not only by the Police agencies but also by the other governmental agencies like the Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force, Border Security Force, the Central Industrial Security Force, the State Armed Police, Intelligence Bureau, RAW, CBI, CID(traffic) Police, Moused Police and ITBP.

Human Rights Commission – a silver lining

The National Human Rights Commission in its Annual Report of 1997-98 records that during the year 1996-97, 188 deaths in Police Custody were reported and during the year 1997-98, 193 deaths in Police Custody, and 700 deaths and 819 deaths respectively in judicial custody were reported to the Commission. In the context of addressing the issue of custodial torture, the Commission has reiterated its earlier recommendations by soliciting early action on the suggestion of the Indian Law Commission to the effect that proposed Section 114(B) be inserted in the Indian Evidence Act to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a Police Officer, as well as the suggestion for amendment in Sec. 197 of the Cr. P.C. to obviate the necessity for governmental sanction for the prosecution of a police officer where a prima-fa cie case has been established in an inquiry conducted by a Sessions judge in the commission of a custodial offence, as also the suggestion by the National Police Commission that there should be a mandatory inquiry by a Sessions Judge in each case of custodial death, rape or grievous hurt.

Some illustrative cases

The cases brought before the National Human Rights Commission reflect a wide range of human rights violations including custodial deaths illegal detentions, inhuman treatment in police custody, and inhuman conditions prevailing in jails.

(1) Ajit Kumar Chaturvedi an undertrial prisoner in District Jail, Agra died as a result of injuries inflicted on him while in custody. It was reported by the prison authorities to the Commission that the head and other body injuries sustained by him were as a result of convulsions arising out of high fever following which he had lapsed into a coma. The Commission observed : ¶This was indicative of the extent to which imagination, pressed to convenience, could stretch itself¶. The report was silent as to what was done to the prisoner while he was in custody prior to his being sent to the hospital. The commission found through its investigation wing that there was evidence of witnesses to indicate torture and physical violence directed against the person of the prisoner by the jail staff and that he had died due to such injuries. The Commission recommended full investigati on by the State CID & prosecution of those found responsible for this tragic death and also compensation of Rs. 1 lakh to the next of kin of the deceased. The Commission noted that the jail authorities are clearly under a moral, legal and constitutional obligation to ensure that prisoners in jail were not harassed or treated with violence. This was so because even the convicted prisoners were not divested of their fundamental rights, the curtailment of which could only be to the extent of the curtailment of which could only be to the extent of the punishment imposed on them.

(2) In a case of custodial negligence a probe by NHRC into the death of a 32 year old undertrial prisoner Laxman Somnath Verma whose death was reported by the jail authorities of District Jail, Kalyan after he died as on 7.12.1996 as a result of ¶cardio respiratory failure due to pulmonary koch's (TB)¶ revealed that negligence in according timely medical treatment resulted in or at least precipitated and hastened the death of the undertrial prisoner who was suffering from tuberculosis. It was noted that though the authorized capacity of the jail was 540 prisoners, more than double that number were lodged in it and that the medical officer of the jail hospital had gone on leave from 2nd December, 1996 as a result of which more than 1300 inmates went without a doctor for several days. Interim compensation of Rs. 25,000 was awarded to the next of kin of the deceased prisoner . The case emphasizes the need for reasonable, prompt and adequate medical facilities for which the person in custody is wholly dependent on the concerned authorities.

(3) One Ashok Kumar, an undertrial prisoner in Roorkee Sub-jail was made to carry a heavy bag of wheat to the flour mill in the prison premises and while carrying the load, he slipped and as the wheat bag crashed on his back causing severe injuries, including a fractured vertebral column, he died. The Commission stated in its order that ¶This, in itself, is sufficient to support the finding that the State is responsible and accountable for the death of Ashok Kumar, who was an undertrial, and who could not have been put to hard labour¶. The U.P. Government was asked to pay an interim compensation of Rs. 1 lakh to his parents.

(4) Shri Balu Shelke an undertrial prisoner arrested for a prohibition offence and lodged in the Yerwada Central Prison was reported to have died on 2nd August, 1996, due to shock following head injuries. The Commission found on a reasonable presumption that Balu died as a result of ante-mortem injuries inflicted with a blunt weapon and that as the injuries were inflicted during custody, they were inflicted by the jail staff, and recommended interim relief of Rs. 50,000 to be given to the next of kin of Balu also directing registration of a criminal case and investigation by the State CID.

(5) The Commission took suo motu cognizance of a newspaper report of 5th August, 1997 and through its investigation Division found that PAC personnel at Asi Ghat, Varanasi has wrongfully confined and assaulted a group of people who had gathered to felicitate a friend on his academic achievement. Taking into account the unprovoked nature of the attack and wrongful confinement, the gravity of injuries caused to the persons of the victims, the medical expenses involved, the prospects of physical impairment of faculties, and, indeed the ¶violation of the dignity and integrity of the person¶, the Commission recommended interim compensation ranging between Rupees ten thousand and twenty thousand. The fact that the ¶step¶ taken under Sec. 18(3) for ¶immediate interim relief¶ is of recommendatory nature would have the effect of computing such relief on a very conservative side, because its acceptance is made dependant on the sweet will of the Government.

(6) In a case of torture by police reported from Haryana, the Commission found that on 8.3.1996 the Police forcibly entered the house of the complainant

Sher Mohammed Khan and mercilessly beat him with sticks causing him injuries and then removed him to the Police Station, Sarad, Gurgaon where he was again beaten up wrapped in a blanket, which resulted in the fracturing of his leg. All this was done with a view to pressurize him to withdraw a complaint filed against some members of a housing Society and to resolve a dispute relating to a plot of land in favour of his opponent. The acts of the police personnel involved in such harassment were found to be unlawful constituting a blatant abuse of their authority in pressurizing the complainant to come to terms with his opponent, in relation to a civil dispute. The Commission recommended that a case against the then S.H.O Police Station, Sadar, Gurgaon, the then S.P and others who were involved in the offence be registered and investigation by the State – CID, asked the D.G.P Haryana to consider the necessity, desirability or otherwise of placing the concerned policeofficers under suspension and recommended that immediate interim relief of Rs. 25,000 be paid to the complainant.

(7) Hussain Teli who was brought to the Police Station at Bonli in Rajasthan for interrogation in connection with a case of murder and detained illegally died the very next morning after he was released from Police custody. The Commission through its Investigation Division gathered information and found that when he was released from Police custody, blood was oozing from his mouth and nose and therefore there was a nexus between the death and conduct of the police during investigation. The Commission recommended payment of interim compensation of Rs. 50,000 to the dependants of the deceased.

The Way to be willed

The cases that come to light reflect the cruelty with which the human beings brought in custody or control are treated by their fellow human beings. Such cruel demeanour of human beings would put to shame even wild carnivorous beasts and terrify and benumb tigers witnessing the skinning of a mighty tigress in the helpless custody of her captors supposed to protect and preserve the specie.

What then is the way to regulate and condition such irresponsible and wanton conduct calculated to disregard the prisoners' right to safe custody and a reasonable care that ought to be taken to preserve his person and personality intact while bringing him to books for the wrong that may have been doen and for which he must be punished. Detection and deterrence would be the key factors for preventing the recurrence of such incidents. An efficient and independent machinery to detect such cases and prompt action to punish the erring officials can ensure some safety against custodial violence. Section 37 of the Protection of Human Rights Act, 1993 empowers trhe Government to constitute one or more special investigative teams consisting of such police officers as it thinks necessary for the purpose of investigation and prosecution of offences arising out of violations of human rights. The Commission's power to uti lize the services of any officer or investigating agency of the Government for conducting any investigation pertaining to the inquiry is however made dependent on the concurrence of the Government by section 14(1). These halfhearted provisions can be put to use by creating a separate permanent agency which handles all the custodial aspects of the prisoners, under the direct supervision and control of the Commission exercised, through high ranking officials other than police officers to be linked with the jail authorities and omitting the intervention of the regular police in all custodial matters. The Commission should be armed with the authority to direct prosecutions of the persons involved in custodial crimes without need of any other authority's sanction in such cases and should have an independent investigation organization working under it for the purpose with all the attendant financial and other powers that will keep it independent from any Governmental control or interference. The limited power of the Commission to recommend prosecution or other action against the concerned person and to recommend ¶interim relief¶ to be paid to the victim or the members of his family under section 18 of the Act leaves the matter to the sole discretion of the concerned Government or authority to whom the recommendation is made by the Commission. There is no valid reason to allow the concerned Government or authority to have a final say in the matter after an independent high statutory body like NHRC finds after a probe that such prosecution is warranted and/or interim relief should be paid. Atleast in the cases of custodial violence these two aspects should be left entirely in the safe hands of this impartial body so that the culprits do not get shielded by any one's vested interests.