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Custodial Deaths

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Isolate us from many critical issues of society in our regular life, but slowly this avoidance/ignorance turns into acceptance and seems very normal. Take for instance famous films and series, such as Sacred Games, Dabangg, Drushyam, Rowdy Rathore, Satyameva Jayate, etc.

What does it have to do with all these movies and series? *Police torture*

According to a report, if a main character in the film performs any violent activity or any false encounter usually spectators encourage that act.

From the perspective of an average Bollywood, the viewer's policy is simply not to maintain law and order, but just to punish and kill the villains.

In this paper, we are going to cover topics like the prevention of the Torture Bill and at which stage it is now in our parliament, what are rights available for an arrested person in India and we will know about what steps Supreme Court has taken in this matter.

After the death of George Floyd in the USA, the custodial death of Jeyraj and Fenix at Sathankulam Police Station raised a lot of concerns about the matter, and again it has given air to have a new debate around police third-degree torture. The death of George Floyd in the USA resulted in heavy protests and as a result of protests, congress decided to pass and introduced a police reform bill along with that, it is discussed to maintain a National database that will register all police misconducts. Is it going to become law? And I believe time alone will tell.

Are you aware that a draft law against torture has been discussed in India as well?

It was ten years ago (2010) and was the subject of many discussions in Parliament, but has not yet been passed.

Globally, it was discussed first time by United Nations in 1975 which was UN Convention Against Torture (1975) and India is a member of the UN, so if any law of the UN has to be applied In India, then we have to make a law by parliament; so making UN Convention Against Torture (1975) law in India, a bill was presented in Lok Sabha in 2010 named as Prevention of Torture Bill (2010). Therefore, under this bill, if a public servant commits torture, he or she is punished.

The bill explains the word Torture very broadly and simply and says that if any, public servant tortures any individual for deriving any information or his confession if he hurts that individual grievously or tortures his life, limb, mentally or physically, and health-wise then all these things will be considered as torture and against this act, there is a punishment of ten years imprisonment.

After being passed by Lok Sabha it comes to Rajya Sabha and for further consideration, it passes the bill in Rajya Sabha select committee for suggestions, the committee provides some suggestions for the bill and says the point-like;

1. There must be an explanation of the definition of torture,
2. If a woman or child has been tortured, then the punishment should be stricter/stern than normal.

An independent authority should be set up which can investigate all the activities and provide all the needed compensation to the victims.

And even after incorporating all these suggestions, the bill was introduced, several times in Rajya Sabha, but so far this bill has to be passed by Rajya Sabha again.

In 2017, the Law Commission said that they are seriously considering the bill, but before passing the bill there should be changes done in the Indian Penal Code, Indian Evidence Act, and also Criminal Procedure Code, which seems like tough work! As of 2019, India has experienced more than 1,700 detention-related deaths.

Judgments are given by the Supreme Court against police torture and violence:

Rudul Shah v. State of Bihar (1983)

In this case, petitioner Rudul Shah was illegally detained in prison for 14 years, and a writ of habeas corpus was filled and his immediate release was requested. This case is important because in this case for the very first time the Supreme Court realized that if by any state, any individual's constitutional rights are being violated, then the individual should be compensated.

Saheli v Commissioner of Police (1989)

In this case, the police along with the zamindar misbehaved with the rented mother and her nine-year-old daughter, due to which the child died and the Supreme Court has compensated the mother by awarding seventy-five thousand rupees. This case is important because in this case, the Supreme Court gave the option to Delhi Administration to recover the amount from the police officer who is responsible for the child's death.

Nilabati Behera v. State of Orissa (1993)

In this case, Suman Behera was arrested by police, and the following day his body was found on the railway tracks with multiple injuries. In this instance, the petitioner was granted compensation of one lakh fifty-five thousand rupees. This case is important because, in the previous cases, the Supreme Court did not follow any specific criteria while awarding the compensation and the compensation is decided according to the situation of the case, but in this case, the Supreme Court held that it is a state's responsibility to give compensation but not the police officer's.

Joginder Singh v. State of Uttar Pradesh (1994)

In this case, the Supreme Court said that, if any arrest is done without any justification, then it must be an illegal act, it was also held that the police officers have the power to arrest, but just by using the power they cannot arrest as there must be a reasonable justification to arrest someone.

D.K. Basu v. State of West Bengal (1997)

In this case, the Supreme Court recognized prison violence and police torture as an attack on human dignity. It was also concluded that, after having received numerous recommendations and policies, police torture and deaths in custody continue to increase.

So, in this case, a total of eleven guidelines were given which should be followed by every police officer while arresting someone, these guidelines and rights are available to every arrested person within the country.

Directions to be followed by police when making an arrest:

1. Whoever the police person handling the interrogation or an arrest should carry their name tag on which their name and designation must be seen clearly and the police have to maintain a register of those officials who are handling the case.
2. Arrest Memo – If any police are arresting someone, then they have to maintain an arrest memo, in which all the details related to the arrest should be there, like the signature of any witness, time, date, and the place of arrest.
3. The arrested person's relatives or friends must be informed about the arrest of that person and where he has been detained.
4. The police have to maintain an official diary in which all the records relating to the case have to be mentioned like the officer handling the case, who has been informed about the arrest of the person, etc.
5. Inspection Memo – If the arrestee has any major or minor injuries on his body, then it should be noted down. The inspection memo should be signed by both the officer and the arrestee and also the arrestee will have a copy of the inspection memo.
6. Medical Examination – After the arrest of the person, he should be examined medically every 48 hours.
7. Copies of all the documents like the Arrest memo, Inspection memo, and Medical examination report should be sent to the magistrate for further records.
8. At the time of interrogation, the arrestee can meet his/her advocate.
9. There should be a police control room in every district and state headquarter, in which all the information related to the arrested, should be received within 12 hours of arrest, and the police control room board will display all this information.

10. The arrested person must be aware of his rights to have someone informed about his arrest as soon as he is arrested.
11. If the arrested person's family, relatives, or friends are out of the district/town then they should be informed through the Legal Aid Organization or by the police station of that particular area or through telegraph within 8 to 12 hours after the arrest.

In *Sheela Barse v State of Maharashtra* and *D.K. Basu v State of West Bengal*, the guidelines were given based on the cases of custodial deaths, but still, the cases rise day by day.

Most people say that Truth can't be revealed without using violence, without any torture, and the truth can't be taken out of the person but also people say that, If the torchbearers of the Law use torture it is not acceptable as they have to maintain Law and order and if they also start using violence it is not acceptable at all.

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