

CUSTODIAL DEATH

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1. Police lock-up or death trap ? Police lawlessness or rule of law ? Police muscle or personal modesty ? Police harassment or human rights ? Yet again a case of custodial death has given rise to myriad hard-touching and soul searching questions. In this country where rule of law is inherent in each and every action and right of

life and liberty is prized fundamental right adorning highest place amongst all important fundamental rights, whether life has no meaning to a person in police custody ? Whether personal modesty, decency, dignity on arrest of a person are increasingly exposed to third-degree practices which over-step the bounds of propriety ? How long, harsh, crude, oppressive, excessive and torturous third-degree methods to the arrested person in the name of seeking information or investigation can be allowed to continue ? Whether police personnel are custodians of law and order or law unto themselves and depredators of civil liberties ? Whether to strip a person of his clothes and making him bare, naked and employing all sorts of physical and mental torture is not violative of prized constitutional right enshrined under Article 21 of the Constitution of India ? Whether police power admits of no human rights of a person in its custody ? Whether for inhuman acts of its officers and servants, the State must be made liable for violation of fundamental rights of its citizens ?

Article 21 of the Constitution of India provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Art. 22 of the Constitution of India provides for protection against arrest and detention in certain cases. Chapter V of the Code of Criminal Procedure, 1973 deals with the arrest of persons. S. 41 makes provision when police may arrest without warrant. How arrest can be made is provided under S. 46 of Cr.P.C. S. 47 deals with search of place entered by the person sought to be arrested and S. 50 provides when person arrested should be informed of grounds of arrest and of right to bail. S. 51 makes a provision for search of arrested person. At the request of the arrested person, he should be examined by the medical practitioner under S. 54, Cr.P.C. Section 56 provides that a police officer making an arrest without warrant, shall without unnecessary delay and subject to the provisions as to bail take the person arrested before the Magistrate or officer in charge of Police Station and under S. 57 of Cr.P.C. the person arrested shall not be detained more than 24 hours by the police officer in the absence of special order of the Magistrate under S. 167, Cr.P.C. Chapter XI of Cr.P.C. deals with preventive action of police and S. 151 makes a provision for arrest to prevent commission of cognizable offence.

Indiscriminate arrest by the police and violation of human rights led the Apex Court to consider

this aspect in the light of increasing crime rates and in *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349 : (1994 Cri LJ 1981), the Supreme Court struck the balance between the two by observing as under (Para 9) :-

“A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges, on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis of deciding which comes first – the criminal or society, the law violater or the law abider

A compensation of Rs.1.50 lacs was awarded to the next of kin of the victim of police atrocities.

The State of Maharashtra was directed to constitute a Committee consisting of its Home Secretary, Law Secretary and Director General of Police for going into all the aspects of custodial violence by the police in the State and suggest comprehensive measures and guidelines to prevent and check custodian violence and death and also suggest for that purpose suitable amendments in the Police Manual of the State and also submit comprehensive scheme for police accountability of human rights abuse. The State Government is directed to take effective steps in implementing the measures and guidelines suggested by the Committee in preventing and checking the custodian violence immediately after submission of report by the said Committee;

The State Government was further directed to provide a complaint box duly locked in every police-lockup and the keys of the complaint box should be kept by the Officer in-charge of the Police Station. The Officer in-charge of the concerned Police Station should provide paper and pen to the detainee if so demanded for writing complaint and the Officer in charge of the concerned Police Station should open the complaint box every day in the morning and if any complaint is found in the complaint box, the officer in-charge of the Police Station should produce such complaining detainee to the Magistrate immediately along with his complaint and the concerned Magistrate would pass appropriate orders in the light of the complaint made for medical examination, treatment, aid or assistance, as the case may warrant;

The State Government was also directed to issue instructions immediately in unequivocal and unambiguous terms to all concerned that no female person shall be detained or arrested without the presence of lady constable and in no case, after sun-set and before sun-rise; to make proper provision for female detainee in separate lock-ups

[*Christian Community Welfare Council Of India and Another vs. State Of Maharashtra and Another*;1995-(101)-CRLJ -4223 –BOM] 2. Constitution of India – Arts. 32, 142, 226 & 300 – Criminal Procedure code, 1973 – Sec. 357(5) – International Covenant on Civil and Political Rights, 1966 – Art. 9(5) – Evidence Act, 1872 – Sec. 106 – Award of compensation from Public Law Proceedings – Different from private law proceedings – Custodial death – State liable for

compensation to deceased's mother- Principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse of arts. 32 & 226 – The Court is not helpless and wide powers given to Supreme Court by art. 32, which itself is fundamental right, imposes a constitutional obligation on Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in Constitution, which enable award of monetary compensation in appropriate cases, where that is only mode of redress available – Power available to the Supreme Court under art. 142 is also enabling provision in this behalf – Death in police custody established – Having regard to deceased aged and monthly income between Rs. 1200 to Rs. 1500 – Respondent State is directed to pay the sum of Rs. 1,50,000 to the widow

Constitution of India – Arts. 32 & 226 – Remedy in public law proceedings – The burden is, clearly on the respondents to explain how the deceased sustained those injuries which caused his death – Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted on the deceased in police custody resulting in his death, for which the respondents are responsible and liable.

Enforcement of the constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contravention. Award of compensation in a proceeding under art. 32 by Supreme Court or by the High Court under art. 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort. 'A claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to arts. 32 & 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under arts. 32 & 226 of the Constitution, for contravention of fundamental rights. Certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of Supreme Court in Rudul Sah and others in

that line have to be understood and Kasturilal distinguished therefrom.

Constitution of India – Art. 21 – Convicts, prisoners or undertrials – Their fundamental rights under art. 21 – Obligation of State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with procedure established by law, while the citizen is in its custody. Convicts, prisoners or undertrials are not denuded of their fundamental rights under art. 21 and it is only such restrictions, as are permitted by law, which can be imposed on the enjoyment of the fundamental right by such persons. It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with law, while the citizen is in its custody. His liberty is in the very nature of things circumscribed by the very fact of his confinement and therefore his interest in the limited liberty left to him is rather precious. The duty of care 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 custody of the police is deprived of his life except according to the procedure established by law. The defence of “sovereign immunity” in such cases is not available to the State. Adverting to the grant of relief to the heirs of a victim of custodial death for the infraction or invasion of his rights guaranteed under art. 21 of the Constitution of India, it is not always enough to relegate him to the ordinary remedy of a civil suit to claim damages for the tortious act of the State as that remedy in private law indeed is available to the aggrieved party. The citizen complaining of the infringement of the indefeasible right under art. 21 of the Constitution cannot be told that for the established violation of the fundamental right to life, he cannot get any relief under the public law by the Courts exercising writ jurisdiction. The primary source of the public law proceedings stems from the prerogative writs and the Courts have, therefore, to evolve ‘new tools’ to give relief in public law by moulding it according to the situation with a view to preserve and protect the Rule of Law. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the Courts too much as protector and guarantor of the indefeasible rights of the citizens. The Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations.

Penal Code, 1860 – Sec. 302 – Evidence Act, 1872 – Sec. 45 – Deceased taken in police custody and found dead next day on railway track without being released from custody – Burden clearly on respondents (State) to explain how deceased sustained those injuries which caused his death – Respondent’s plea that deceased escaped from police custody – Opinion of Professor and Head of Deptt. of Forensic Medicine, who not examined as witness during inquiry – Being cryptic and based on conjectures, not acceptable – Deceased in police custody resulting in his death for which respondent are responsible and liable

The burden is, clearly on the respondents to explain how the deceased sustained those injuries which caused his death. Unless a plausible explanation is given by the respondents which is consistent with their innocence, the obvious inference is that the fatal injuries were inflicted on the deceased in police custody resulting in his death, for which the respondents are responsible and liable.

Criminal Procedure Code, 1973 – Sec. 176 – Custodial death – Inquiry contemplated independently by magistrate and not jointly with police officer when role of police officer itself matter of inquiry – Joint inquiry report in case cannot made u/s. 176 CrPC and cannot be relied on as statutory report relating to cause of death

Joint inquiry report is stated to have been not made been u/s.176 CrPC and was not strongly relied on by the Additional Solicitor General as a statutory report relating to the cause of death. An inquiry u/s. 176 CrPC is contemplated independently by a Magistrate and not jointly with a police officer when the role of the police officers itself is a matter of inquiry.

[Nilabati Behera Alias Lalita Behera V. State Of Orissa;1993-(002)-SCC -0746 -SC

1993-(080)-AIR -1960 –SC;1993-(099)-CRLJ -2899 –SC]