

Custodial deaths

TORTURE, or even homicide, in police custody is no news these days. But in fact, are the police authorised to torture a person in their custody?

The answer is an emphatic no.

They have no power to torture. In fact, torturing to induce a person to confess that he committed a crime or to induce him to point out where certain stolen goods are concealed, is an offence under Section 330 and 331 of the Indian Penal Code, punishable with imprisonment up to 10 years.

But convictions of police officers for torturing those in custody, have been very few. This is because the atrocities within the precincts of the police station are often left without any ocular or other direct evidence to prove who the offenders are.

Generally, only police officials present at the station can explain the circumstances in which a person has died in custody.

Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues.

Over insistence by courts upon proof beyond every reasonable doubt, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, also results in miscarriage of justice and make the justice delivery system a suspect.

Therefore the courts in such cases must adopt a realistic, rather than a narrow and technical approach, and deal such cases with the sensitivity which they deserve, says a Bench of the Supreme Court of India. (JT 1995(4) SC 445).

An unrealistic approach by the courts may encourage tortures in custody because it reinforces the belief in the mind of the policemen that no harm would come to them if an odd prisoner dies in the lock-up, in the absence of evidence for the prosecution to directly implicate them with the torture.

□ Court Diary

Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society governed by the rule of law. Torture in custody flouts the basic rights of the citizens recognised by the Constitution of India and is an affront to human dignity.

Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The common man may lose faith in the judiciary itself, which will be a sad day.

The court pointed out that the National Police Commission in its 4th report on June 1980, had noticed the prevalence of custodial torture and had observed that nothing was so dehumanising as the conduct of police in practicing torture of any kind on a person in their custody.

The commission noticed with concern the inclination of even some of the officials in supervisory ranks in the police hierarchy, to countenance this practice in a bid to achieve quick results by short-cut methods.

Disturbed by this situation the Law Commission in its 113th report recommended amendments to the Indian Evidence Act so as to provide that if there is evidence that an injury was caused during the period when the person was in the police custody, the court may presume that the injury was caused by the police officer having the custody of that person during that period, unless the police officer proves to the contrary.

The Supreme Court noticed 'with concern' the fact that the recommendations had gone unnoticed and the crime of custodial torture flourishes unabated.

Keeping in view the dehumanising

aspect of the crime, the flagrant violation of the fundamental rights of the victim and the growing rise in the crimes of this type, where only a few come to light and others don't, the court expressed its hope that the Government and Legislature would give serious thought to the recommendations of the Law Commission and bring about appropriate changes in the law, not only to curb the custodial crime but also to see that the crime does not go unpunished.

In this case, 5 police officials who allegedly tortured Nathu Banjara of Ramapura to death, had almost escaped the clutches of law. The policemen who were witnesses in the case feigned ignorance about the whole incident. Madhya Pradesh High Court acquitted the accused on the grounds that there were no direct ocular evidence of their complicity.

The Supreme Court on the contrary, held that four of them had participated directly or indirectly in causing injuries to Nathu Banjara while in custody. Though it is not possible to say that they intended to cause Nathu's death, they had knowledge that the injuries inflicted were likely to cause his death. The offence thus would squarely fall under Section 304 Part II read with Section 34 IPC.

Revenue recovery

IF a person having sufficient means willfully defaults payment of arrears of public revenue, he can be sent to civil prison. Section 65 of the Kerala Revenue Recovery Act provides for such a drastic mode of recovery of arrears of public revenue.

When arrears are not paid after the service of a written demand under Section 34 of the

Act, and the District Collector is satisfied that the defaulter is willfully withholding payment of arrears or that the defaulter has the means to pay the arrears or some substantial part thereof, and refuses or neglects to pay the same, he may issue a warrant for the arrest of the defaulter.

According to Justice P A Mohammed there are two indispensable pre-requisites for issuing a warrant for arrest under Section 65 - the issue of a demand notice under Section 34 and "the satisfaction of the district collector."

In the case of Mr K N Muralidharan, a spices trader in Kochi, who had been jailed on the orders of Ernakulam District Collector on the grounds that he willfully defaulted payment of the arrears of sales tax for the years 1979-80 to 1987-88, totalling Rs 26 lakh odd, the second pre-requisite was not there. On this score the court set aside the order of detention.

The court found that the impugned order had been passed by the Collector on the basis of a report of tahsildar, Kochi, that the defaulter, though had no landed property in his name, had sufficient means being still in the field of spices business at Mat-tancherry.

That would mean that the District Collector had not conducted any independent inquiry contemplated under Section 65, on the plea advanced by defaulter that he had no means to pay the amount and therefore the non-payment was not willful.

When such a contention is raised it is imperative that the Collector should conduct an inquiry and satisfy himself as to whether the defaulter is withholding or neglecting payment willfully or dishonestly.

The Judge also accepted the contention advanced by Mr K R Radhakrishnan Nair, the counsel appearing for the defaulter, that when powers under Section 65 are invoked it is essential that all the statutory requirements are complied with 'stricto sensu'. The entire decision making process shall also be fair and reasonable in all respects.

- Scaria Meledam