

POLICE CUSTODY AND BASIC INDIVIDUAL RIGHTS

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“No free man shall be captured, imprisoned or disseised or outlawed or exiled or in any way destroyed, nor will we go against him, except by the lawful judgment of his peers or by law of the land.” Ch.39MAGNA CARTA. (1215)

It is common observation that human beings everywhere demand the realisation of diverse values to ensure their individual well-being as well as collective well-being. It is also common observation that these demands are often painfully frustrated by social as well as natural forces, resulting in exploitation, oppression, persecution and other forms of deprivations. Deeply rooted in these twin observations are the beginning of what today are called “HUMAN RIGHTS.”

Our concern is with human condition and the imperative need to improve it through such resources as we can develop. Human rights are no longer a stray collection of moral principles. Every human right can be legally defined, interpreted and implemented; human rights now form a coherent body of law. It would, hence, be apt to say that commitment to a just human order is cardinal to human rights.

It cannot be disputed that everyone has the same basic needs; to eat, sleep, protect oneself against adverse conditions, live in a community, feel and be safe. Therefore, every one has the same urges and same passions. The legal dimensions of the changes and varying situations in a society offer a challenge as also an opportunity to the legal community for an in-depth examination of issues with a rational, objective and open minded approach. It is in this background that I have modestly endeavoured to reflect upon the problems and rights of persons who are, by force of innumerable circumstances, led to the dreaded experience of being arrested.

The basic thought which must be imbued in our minds is that when a person is arrested his fundamental right to liberty is interfered with. Therefore, whenever the liberty of a person is infringed it should be done with all reasonable care so that it does not smack of abuse of process.

The Universal Declaration of Human Rights on December 10, 1948 by UN General Assembly recognised the right of every person to individual liberty (Article 3). Article 9 & Article 11 recognize the right of freedom from arbitrary interference with person's privacy.

In the pattern of criminal procedure two stages may be worth mentioning in relation to arrests: First, the period of police custody prior to the first appearance of the arrested person before the examining magistrate and second, the period of prison custody. The interval between arrest and production before magistrate is generally used for collection of evidence, but while the collection of evidence by legitimate means is necessary for investigation, the subjection by police of arrested person to duress, improper influence or torture in order to extract confession is an infringement of the fundamental right of freedom and it positively amounts to behaviour abnoxious to the rule of law. Therefore, the entire edifice of this article is based on the fact that the arrested person should be safe-guarded against the possibility of

such behaviour by reducing the opportunities to a minimum. The International Commission of Jurists, in one of their reports in regard to duration of police custody, has vehemently argued that the rule of law requires that the following minimum principles must be observed:-

1. The arrested persons should be produced before a magistrate or other competent judicial officer with the least possible delay;
2. In any event the maximum period of police custody should be as short as possible and should be fixed by law;
3. In general the arrested person should be remanded to the custody of the prison authority after his first appearance before the judicial officer, in order to prevent irregular interrogations by the police.

The above mentioned principles, as enunciated by the International Commission of Jurists, are not unheard of because all these salutary provisions have been incorporated both in the scheme of our Constitution as well as the Code of Criminal Procedure. The Constitution of India under article 22(1) and section 50 of the Code protect a person against arbitrary arrest in so far as it confers on the individual a right to be informed of the grounds of arrest, as well as guarantees him the right to consult and be defended, by a legal practitioner of his choice. Sub-clause (2) of Article 22 of the Constitution and section 57 of Code of Criminal Procedure ensure that the person arrested or detained in police custody must necessarily be produced before the nearest magistrate within a period of twenty four hours from such arrest, and, therefore, what follows is that the arrested person cannot be detained in police custody for a period exceeding twenty four hours except after obtaining permission from magistrate. I may submit that the authority given to a magistrate to determine whether a person arrested should be sent in police custody for a period beyond twenty four hours is a power which is to be exercised with great care and precaution because the magistrate's court is the court of first instance where either the personal liberty of a person arrested will be protected or will be lost. Hence, when a person a person arrested produced before the magistrate he must take upon himself the task of a guardian of basic human rights and in this background apply his judicial mind to determine the regularity of such arrest. One cannot overlook the object and the scope of the production of person arrested before a magistrate with the least possible delay is not only for the application of judicial mind relating to the custody to be ordered, but also to enable the arrested person to make an effective representation in the matter. The Code of Criminal Procedure, 1973 under section 167 indicates that the policy of the law is to bring an independent judgment to bear n the matter for it is expressed in the section that the magistrate, before whom an arrested person is produced, has to scrutinize the act of others and to see whether the formalities required by law had been complied with or not. The law of the land also ensures that no person be detained in police custody beyond a period of twenty four hours of his arrest. The question to be seen is whether the arrested person is actually brought before the Magistrate within twenty four hours of his arrest or the provision just exists on the statute book not to be followed?

It would be apt at this stage to have a cursory look about how the courts in our country, especially the Supreme Court of India, have reacted to the atrocities, problems and distress of persons in police custody. There may be decisions on the subject but some of them are conspicuous in the chain of case law. To start with, way back in the year 1926 a Full Bench of teh Calcutta High Court had occasion to interpret section 76 of teh Calcutta Police Act (Act 4 B.C. of 1866) which, inter-alia, gave power to the Deputy Commissioner to detain in police custody for any length of time any arrested person without warrant. Reference: (Mohd. Suleman Vs. King Emperor (30) CWN. 985). The court construed that section to mean that the Deputy Commissioner cannot detain a person for any longer time than is

necessary to enable such person to be brought before a Presidency Magistrate. At page 987 of the aforesaid judgment the court observed:

“It is not in doubt that the right to be taken out of police custody by being brought before a magistrate is a right given in the interest of the accused. It is given for more reasons than one, it prevents arrest and detention with a view to extract confessions or a means of compelling people to give information, it prevents police stations being used as though they were prisons, a purpose for which they are unsuitable. It affords an early recourse to a Judicial Officer independent of the police on all questions of bails or discharge. These matters are not in doubt.”

The view of Calcutta High Court was endorsed by the Supreme Court of India in the case of Ajaib Singh reported in A.I.R. 1953 SC 10 holding that in arrests without warrant production of arrested person before the magistrate within twenty four hours of such arrest is particularly desirable for application of judicial mind.

In the early eighties, as we all must be distinctly remembering, the most barbaric act of blinding of many under-trials by cycle spokes took place in the central jail of Bhagalpur. A petition was preferred by these victims before the Supreme Court of India in the case of Khatri Vs. State of Bihar- 1981 (1) SCC 623, Bhagwati, J. speaking for the court said:-

“These cases represent instances of the cruel and barbaric manner in which the administrators of law deal with persons arrested by them. The police are supposed to enforce the law and not to break it, but there it seems that they have behaved in a most law-less manner and defied not only the constitutional safeguards but also perpetrated what may aptly be described as a crime against the very essence of humanity.”

Furthermore, the Supreme Court casts upon the magistrate a heavy responsibility in the aforesaid case when it held that it is the obligation of the magistrate to inform the accused that if he is unable to afford a lawyer he is entitled to free legal aid, secondly, that the legal requirement of bringing the arrested person before a magistrate within twenty four hours of such arrest should be scrupulously followed and the magistrate should, in such cases of non-compliance of the aforesaid provision of the Code, heavily come down upon the police. The Bombay High Court, in the case of Sharif Bhai Mehboob Vs. Abdul Razak reported in A.I.R. 1961 Bombay 42, has held that the provisions of the Code of Criminal Procedure expressly require a police officer to produce the person arrested for commission of a cognizable offence before a magistrate within twenty four hours of such arrest. If he fails to do so, he will be certainly guilty of wrongful detention of the person whom he has arrested. The Supreme Court of India, in the case of Madhu Limaye & others reported in A.I.R. 1969 SC 1014, while construing Article 22 provides the next most material safeguard that the arrested person must be produced before the magistrate within twenty four hours of arrest so that an independent authority exercising judicial power may without delay apply its mind to the case.

The Indian penal Code, 1860, under Section 330 and Section 331, makes punishable with a term extending upto seven and ten years respectively a person or an officer whoever voluntarily causes hurt or grievous hurt to extort confession, but convictions under the aforesaid sections, as experience shows us, have been very few 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. Nevertheless, recently in a case of custodial death (State of Madhya Pradesh Vs. Shyam Sunder Trivedi reported in 1995(4) S.C.C. 262) the Supreme court convicted Trivedi (respondent No.1) under section 304 part 11/section 34 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for two years and also to pay a fine of Rs. 50,000 (Fifty thousand). It was a case where on the fateful night intervening 13

& 14 October in the year 1981 respondent and others gave a beating to one Bathu Banjara and tortured him with the intention of extracting a confession of guilt from him in connection with the murder of one harijan woman. Thus we see that the uncivilized method of Interrogation of a suspect took its toll and a fatal blow inflicted on human dignity when custodial violence claimed yet another life. In the light of the aforementioned case law it is clear that the provision inhibiting detention without remand is a very healthy provision which enables the magistrate to check over the police investigation and it is necessary that the magistrate should try to - enforce this requirement and where it is found to be disobeyed, come down heavily upon them.

The liberty of an individual is a matter of great constitutional importance in our system of governance. To any civilized society, there can be no attribute more Important than the life and personal liberty of its members. Hence, all the due process safeguards should be followed and before the police can restrain a citizen's liberty, there must be a reasonable basis to believe that the citizen has committed or is committing a crime and the decision to arrest should be based on credible information which rests on definite facts. It is the duty of the courts as the custodian and the sentinel or the ever-vigilant guard of freedom of an individual to scrutinize with due care and anxiety that this precious right which he has under the Constitution is not taken away capriciously, arbitrarily or without legal justification.

Our Apex court has also taken serious notice of the Fundamental Right of protection against arbitrary arrest embedded in our Constitution in the popular case of **Gopalan Vs. State of Madras, reported in 1950 SCR 88** wherein Justice S.R. Das held that Article 22 of the Constitution of India ensures four things:-

- a) Right to be informed regarding the grounds of arrest;
- b) Right to consult a legal practitioner of his choice;
- c) Right to be produced before a magistrate within twenty four hours of such arrest;
- d) Freedom from detention beyond the said period except by order of the magistrate.

In the chain of rights guaranteed to an arrested person I may also state further-more, that the right to consult and be defended by a legal practitioner has been explicitly dealt with and upheld by a majority opinion of judges of the Supreme Court of India in the case of **State of Madhya Pradesh Vs. Shobhram- reported in A.I.R. 1966 SC 1910**.

Thereafter, the basic rights against arbitrary arrest were also adopted in the International Covenant on Civil and Political Rights at the twenty first session of the U.N. General Assembly on December 16, 1966, which was later acceded to by India on April 4, 1979. Some of the important rights recognized and adopted by the U.N. General Assembly are as follows:-

- 1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (Article 6 (1))
- 2) Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (Article 9 (2)).
- 3) Anyone arrested or detained on a criminal charge shall be brought before a judge or other officer authorized by law to exercise Judicial power and shall be entitled to trial within reasonable time or to release. (Article 9 (3)).

- 4) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. (Article 9) (5).
- 5) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (Article 10 (1)).
- 6) Every one charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. (Article 14 (2)).
- 7) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor attacks on his honour or reputation. (Article 17 (1)).
- 8) Every one has the right to protection of the law against such Interference or attacks. (Article 17 (2)) .

Thus in conclusion I may submit that human nature will only find itself when it fully realizes that to be humane it has to cease to be brutal or beastly. Man has reason, discrimination and free will. The brute has no such thing. If the individual goes then surely all is lost, for If individual ceases to count then what is left of society? Individual freedom can alone make a man voluntarily surrender himself completely to the service of the society. If it is wrested from him, he becomes an automation and the society is ruined. Denial of personal liberty is contrary to the very nature of man, but nonetheless at the close a word of caution- that although Personal liberty Is to be fully valued but it must not be forgotten that man is essentially a social being, unrestricted personal liberty is the law of *the* beast of the jungle. Therefore, a mean has to be struck between personal liberty and social restraint. Submission of personal liberty to social restraint for the sake of the well being of the society enriches b9th the Individual and the society of which he is a part.

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