

Judicial Dynamism and Custodial Violence

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Abstract

The State owes a primordial mandatory function to maintain the Law and order in the society by strict enforcement of the criminal law. Be it so, one should bear in mind that the criminal should be understood as a child of social necessity with an avowed purpose to be realised by the state in the interest of the public at large. It would be pertinent and significant to add in this context that the enforcement of the criminal is always guided by the peremptory norm of Rule of law which is the basic structure of the Indian Constitution.

In India the Indian Penal Code and the code of criminal procedure, The Indian Evidence Act are the major substantive and procedural criminal laws as well as any other legislation made for the time being in force.

A person arrested and detained by the police in their custody but subjected to injurious and oppressive treatment is virtually there by deprived of the fundamental right to life and personal liberty guaranteed by the constitution of India. The persons so arrested and confined in the police custody is still a person for all practical purposes therefore entitled to all the fundamental rights as well as the benefit of all privileges accorded by the constitution and statutes subject to the limitations of the law.

As a corollary it emanates that the law enforcement process, exercise of statutory functions are there by governed by the rule of law.

The investigating authorities should bear in mind fundamental proposition that they are governed and directed since the registration of F.I.R till the charge sheet is lodged before the competent court. The constitutional, statutory, and international framework envisages the administration of criminal justice should operate fairly adhering to the principle of fair play of justice.

In fact, the Indian Judiciary (Apex) constitutionally created body is the custodian and protector of the rights and liberties of the people, upholding the supremacy of the constitution as well. Therefore, it has authority as well as a solemn duty constitution has imposed to redress the aggrieved in mates and issue necessary directions. As a matter of fact, the apex court has left no stone unturned in asserting their constitutional jurisdiction in multiple ways whenever the victims of custodial atrocities knocked the doors of the court and readily offered appropriate remedy. it has been consistently maintained by the supreme court in plethora of cases that the investigation of criminal cases tainted with custodial violence is repugnant to the fundamental right of life and personal liberty in as much as criminal justice is constantly monitored by the constitutional prescriptions and basic human rights enshrined international covenant on civil and political rights 1966. The menace of custodial violence is serious global menace; therefore, UNO has adopted convention against torture 1985.

The Indian supreme court has by its judicial dynamism has broken fresh ground by enlarging the scope of right to life and personal liberty in conformity with rule of law and human rights.

Keywords: Life and personal liberty–Right to life and personal liberty guaranteed by Art.21 of the Constitution of India, Arrestee a person arrested by police, Rule of Law- Administration according to authority of Law, Custodial jurisprudence The Judicial prescriptions to be observed by the Police and Law Enforcement Authorities, custodial violence-violence or injury or force which also includes death of inmate in the police custody

Discussion

Public tranquillity - Power of State - Objectives of criminal Law

Assertion of the coercive power by the state through the statutory rules enforced by the administrative instrumentalities is inevitable at the same time. indispensable alternative to sub serves the interests of the community at large. Apparently, social cohesion and public tranquillity undisturbed is an ideal in all times, however, far from being a reality.

The social need of maintaining the law and order essentially demands the enforcement of the criminal law against the anti-social elements, but subject to the parameters prescribed by the law.

Criminal Law-subjection to Constitutional norms and Rule of Law

Despite the object of the criminal law is to protect the public and punish the wrong doers against

misdeeds of the guilty, a meticulous perusal of the legal framework reveals that the administration of the justice is strictly governed by the peremptory norms of the Constitution, Rule Of Law and the Procedural law thereof, so as to strike a fair balance between the public interest, the sensitive and legitimate rights of the disadvantaged accused against arbitrary and indiscriminate application of law and punishing the innocent persons.

Criminal Law enforcement process- Police powers- subject to judicial scrutiny

The process of the criminal law is always guided and directed by the spirit of the fair play of justice within the ambit of law which the authorities ought to act and observe. Every act of the enforcement authorities is susceptible and subject to the statutory norms and judicial scrutiny. As such, it is patent that the process of the criminal law tempered by the constitutional guarantees and absolutely forbids the application of force, use of violence, resorting to extra legal methods injurious to life limb or body. Apparently, all the powers vested by the law in the police are vast as well as prone to gross abuse by them to the detriment of the inmates.

In spite of the fact that the powers of the police are vast and inevitable in the public interest, these are to be exercised them inconsonance with the test of the fair Procedure envisaged under Art.21 Of the Constitution of India, and statutory directions² in this regard.

The police authorities are clothed with wide powers³ to arrest a person which incidentally results in deprivation of the personal liberty of the arrestee and such powers of arrest and detention also should exercised be in conformity with the constitutional⁴ and statutory⁵ prescriptions thereof.

The custodial violence or any treatment of the person in custody injurious to the life, limb or health which may cause physical or mental disability is flagrant violation of the constitutional mandate of Art.21 guaranteeing the fundamental right to LIFE and PERSONAL LIBERTY as a result is challengeable.

The Procedure referred to in Art.21 of the Indian Constitution demands inviolable adherence to the FAIR, JUST, and REASONABLE Process whereby arbitrary and indiscriminate criminal law enforcement to the prejudice of the individual subject to the process of the criminal law can be avoided. Virtually, the implication of the Procedure contemplated in Art.21 embodies the spirit of the concept OF RULE of LAW⁶. Succinctly, the constitutional direction in Art.21 is in fact, a precautionary and preventive initiative to preclude the Law Enforcement authorities of the criminal law from assuming a dictatorial and tyrannic role model of law enforcement authorities posing to be Law to themselves.

It would be pertinent in this context to add that quintessence of the Indian constitution is founded upon the bedrock of the spirit of the Rule of law and the same is sustained by the judicial dynamic and activist interpretation of the fundamental right to life and personal liberty vouchsafed by the Indian constitution under Article 21. The said life and personal liberty can be deprived by the state only according to the procedure established by law. Article 21 strikes a balance between the broad interest of the community at large on one hand and the individual interest of a helpless person being deprived of his personal liberty under the legal process.

As against this constitutional framework, the criminal law is the principal corpus juris for the maintenance of law and order and any deviation from the procedure⁷ prescribed there under would be violation of personal liberty under Article 21. The administration of criminal justice is set in motion by the registration of F.I.R.⁸ and arrest⁹ of the suspect accompanied there after.

All such process of the criminal prosecution should be strictly carried out in accordance with the letter and spirit of fair play of justice read with the constitutional guarantees. Once a suspect is arrested and detained in the police custody the inmate is interrogated to elicit the information¹⁰ relevant to the case under investigation. The progress and success of the criminal process of prosecution obviously depends upon the information gathered during investigation by the authorities thereof.

In spite of the statutory power to examine a suspect arrested or to examine a person who can furnish the information a sequential legal process is conditioned by the prescriptions of Article 21 and other statutory privileges accorded to a person accused of a criminal charge or a witness there under. Therefore, the investigating authorities are unexceptionally precluded from applying any force¹¹ or exertion of violence imperilling life, limb or body of such person during interrogation so as to extract the information required to the police in a case under investigation. Both substantive and Procedural laws of the land are very transparent and clear in unambiguous terms on this aspect. A meticulous and profound appreciation of the Provisions of the procedural law when read conjunctively with constitutional guarantee of Art.21 obviously forbid the police officials resorting to application of force or violence during investigation.

Evidently, as against this national constitutional and legal framework, one should be vigilantly

cognizant of the wide spread notorious ,illegal and injurious police practices shocking the Conscience of the JUSTICE. In fact it should be noted that any type of injury or lethal force in the inflicted or applied in the police custody amounts to flagrant violation of the inviolable right to Life and personal liberty guaranteed under the Constitution of India

Judicial Dynamism–Access to Apex judiciary to victims of custodial violence

The Supreme court has broken fresh ground by its judicial dynamic and activist approach manifesting profound and earnest concern reminded of the paramount constitutional duty to uphold the constitutional supremacy and role as GAURDIAN of the Fundamental rights an implication of the authority vested by Art.32 of the Constitution of India gave birth to a new branch of constitutional jurisprudence namely, Custodial Jurisprudence. As a result, the supreme court has been incessantly striving and sparing no efforts to keep open the access of justice to the victims of custodial atrocities and providing appropriate remedy to aggrieved there by whenever the ends of justice demanded, thus, reiterated the basic principle namely UBI JUS REMEDIUM¹². By activist and humanistic liberal interpretation of life and personal liberty a constitutional guarantee by Art. 21 where by the inmate victims of custodial violence could be brought within the fold of fundamental right to life and personal liberty .

The important and significant consequence the innovative , dynamic and generous approach of the Apex judiciary is that the instrumentalities of the administration of criminal justice is who despite the constitutional and statutory imperative prescriptions and proscriptions recurrently indulge in custodial violence , are reminded and sensitized that the police authorities in India who flagrantly violating the said mandates official should necessarily be scrutinized on the touch stone of the RULE OF LAW which is the basic structure of the Indian constitution as well as a guiding in violable mandatory norm of the administration of the criminal justice.

The fundamental right to life and personal liberty has widely pervasive and profound purport coupled with far reaching object serving the interests of divergent sections of the people in the country. The prime point which must be borne in mind is that whenever the machinery of the state plunges in to action it should bear in mind all these norms of custodial jurisprudence. Any act interfering with the life or personal liberty owing to the injurious treatment of the inmate since it does not pass test of fair procedure laid down in Art. 21 of the Indian constitution

Life - Fundamental right—more than mere animal existence:-

The life envisaged in Article 21 unlike its literal purport connotes more than just biological existence , on the other hand as rightly observed by the judiciary it in fact , embraces a state of a person living with dignity¹³ and decency as such ,the life is enjoyed in normal course or life is a comprehensive term covering all indefeasible multiple rights incapable to define or describe in a precise manner.¹⁴

Custodial violence –Glaring violation right to life

The liberty enshrined in Article 21 speaks about state of freedom from physical or body restraint, at the same time in its wider perspectives denotes all such other freedoms with which what an individual can do according to his choice. In the light of the implication of the words Life and Personal Liberty any form of custodial atrocity , injury , inflicted, force applied or lethal treatment in the custody meted out to a person detained in the police custody are glaring violation of Article 21 in as much as ,such treatment does not pass the test of fair procedure laid down by the supreme court as a prerequisite to validate the deprivation of personal liberty under Article 21 of the Indian constitution. That any injurious or lethal treatment meted out to an inmate in the custody is grossly illegal , hence, challengeable on the touchstone of the constitutional prescription in the light of plethora of landmark judgments of the Indian supreme court. A point of vital constitutional and socio-legal significance that emerges from these judicial verdicts is that the administration of justice should have strict regard to the constitutional and legal frame work of the land while discharging their duties and exercising the statutory powers as otherwise , any deviation¹⁵ tant amounting to transgression of constitutionally guaranteed inviolable fundamental right to life and personal liberty under Art.21 of the Indian Constitution. Further, time and again ,the Indian supreme court has not tired to emphasis to reiterate, and impress upon the investigating officials that the gravity of the crime under investigation, cause of public interest to prosecute the offenders does not justify exertion of force, violence, infliction of injury and endangering the life of the inmate detained in the police custody on the baseless and lame pretexts of meeting the ends of justice and that the means and process of the administration criminal justice should be legitimate and fair with real compliance of the fair procedure¹⁶

Notion of Fair Procedure– Implications against custodial violence

The procedure established by law contemplated in Article 21 in fact is a caution to the law enforcement authorities as well as a remainder against any deviation from this peremptory constitutional norm whenever the law enforcement authorities exercise their power resulting in arrest and detention of the individuals. It is also a positive direction to adhere strictly to the procedure described for exercising the statutory powers. Therefore, it is obvious that the entire criminal law process of investigation is closely guided and directed and monitored by the principles of fair play, therefore, the stress of the judiciary is that arbitrary and whimsical exercise of the powers or using force or violence against the arrestees is blatantly repugnant to the constitutional¹⁷ and human rights jurisprudence.

The Indian constitution in its preamble, Part III and Part IV thereof endeavours to uphold the inherent dignity of the person and it has been consistently maintained that even an arrested and a convict by the court are Persons entitled equally to reap the fruits of the Fundamental rights and to the claim of Dignity even when arrested or convicted by the Court

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Police -Law Enforcement authorities- primary responsibility–default-Liability

The Supreme court has time and again in plain terms tried to educate the police authorities that their powers during investigation are limited subject to the fair play of justice coupled with the rights and privileges accorded by the constitution and the Law for the time being in force.

The judiciary [Apex, a constitutionally created independent adjudicatory functionary body is the custodian and vigilant protector of the rights of the people by virtue of special original jurisdiction vested by ARTICLE 32

of the Indian constitution keenly and zealously monitors the acts of Law enforcement officials.. As a result it, concomitantly follows that the apex judiciary owes a solemn duty to assert its jurisdiction to vindicate the deprived rights of the victims of custodial misdeeds of the police officials. This wide constitutional extra ordinary powers of the supreme court have been employing to remedy the victims as well as penalising the erring police authorities to impress upon them that the delinquent police officials would not be spared if found guilty of custodial crimes.¹

Victims of custodial violence- concern of the Supreme court

Another significant point of vital constitutional, socio economic and legal importance is that the supreme court has recurrently and consistently demonstrated its concern to the woes of the victims of custodial atrocities, taking in to consideration the peculiar and disadvantageous and helpless state of the victims by its humanist liberal approach to the cases of custodial crimes, the supreme court has set a precedent by daringly deviating from the age old conventional procedural rules such as locus standi²⁰ which if rigidly insisted would result in miserable and aggravated injustice to the victims conspicuously inconsistent with the fair play of justice amounting to arbitrary observance of procedural law in sheer technical context to the great detriment of the victim. Hence the judiciary has broken a fresh ground by relaxing the rule of locus standi entertained multiple petitions presented to the supreme court NOT by the aggrieved victim directly by himself, or herself, but a person purely interested in the enforcement of the rights of the person, who [victim] cannot due to poverty, ignorance of law and procedure, incommunicado situation incapable of knocking the doors of justice and seek appropriate remedy under the law.

Virtually these decisions of the apex judiciary established beyond all doubt that the instrumentalities of the administration of criminal justice is absolutely governed by the supreme vigilance of the rule of law and all the relevant body of legal frame work on the subject. it is further explicitly evident from the judicial rulings that the non observance of all these indefeasible norms would make the deviant police officials to face the music for the violation and cautioned that such officials are susceptible to strict liability²¹ according to law without any lenient consideration.

Judicial Dynamism– Consequences-Relief to victims of Custodial Violence

It is really heartening that in the light of enlarged scope of article 21 by the supreme court the writ jurisdiction so as to facilitate the award of pecuniary remedy to the victims custodial crimes which as a matter of fact is a great relief to the victims. It is non Compliance of the Rule of law violating the rights and privileges of the inmates are meticulously verified and the court will proceed with appropriate action there for. The new domain designed by the supreme court of Article 21 has identified certain new limbs of life and personal

liberty inherent there in. Consequently, the victim could challenge the custodial atrocities in the light of latest developments and seek appropriate remedy . As a result of widening the scope of custodial rights of the inmates by the dynamism of the supreme court it is possible that the police officials may not exploit the helpless situation of the inmate and abuse their statutory powers for ulterior motive. The comprehensive ambit of right to personal liberty and life under article 21 undoubtedly has under gone radical metamorphosis by judicial innovation laying down the test of fair, just and reasonable procedure as an Acid test to verify the tenability of charge of custodial crime in particular.

The activism evinced by the supreme court of India has generated a ray of hope and assured sigh of relief to the victims of custodial crimes, since the victims could hopefully and confidently have access to the constitutional apex judiciary for appropriate remedy. The novel trends of Indian judiciary laid through its writs can be regarded as Magna carta of the rights of the inmates and directives to the custodial authorities.

Conclusion

The custodial jurisprudence a new body of law in the sphere of administration of criminal justice emphasises that the deprivation of life and personal liberty which are inherent human rights with their roots in the law of nature embodied in the human rights jurisprudence at the international level, according to the judicial proposition is conditional so as to meet the needs of enforcing the law to bring the culprits to the book. As such, the custodial jurisprudence lays special stress that the enforcement authorities should strictly conform to the letter and spirit of the constitutional and statutory directions without any deviation from.

There is a consistent and repeated reminder that operation of criminal procedure and use of force or violence, infliction of injury are strictly forbidden under the law in the light of test of fair just and reasonable procedure for the purpose of the article 21 of the Indian constitution.

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