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### **Custodial Violence, Custodial Rape and Custodial Justice to Women**

The position of the Indian woman was in no sense better. Only a small fraction of them enjoyed franchise because it would depend on the conditions like education, the extent of property owned and the kind of liberty and dignity enjoyed by woman. Industrialization, mobility and migration of labour population increased the chances of women being exposed to interaction at various levels in the society. A part from falling prey to the sexual lust and greed of some unscrupulous they on occasions also become vulnerable to those on whom they pin their hopes as their protectors and custodians as employees and wards the worst happened with women who were forced to seek sanctuary in police custody were instead with scars on their souls and bodies wrecking them psychologically.

In a writ petition based on a letter addressed by sheela Barse, a journalist, complaining of custodial violence to women prisoners whilst confined in the police lock-up in the city of Bombay. The petitioner stated in her letter that she interviewed fifteen women prisoners and five out of them told her that they had been assaulted by the police in the police lock-up. Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the case of two namely, Devamma and Pushpapaeen who were allegedly assaulted and tortured whilst they were in the police lock-up. But, since these allegations were made by Devamma and pushpapaeen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, the supreme court treated the letter of the petitioner as a writ petition and issued notice to the state of Maharashtra, Inspector-general of prisons, Maharashtra calling upon them to show cause why the writ petition should not be allowed.

Legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is constitutional imperative mandated not only by Article-39-A but also by Article-14 and 21 of the constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests. Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problem where legal assistance is required but by reason of his being incarcerated; it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore, absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners.

The Report of Dr. Miss A.R. Desai shows that there is no adequate arrangement for providing legal assistance to women prisoners and the situation which prevails in the matter of providing legal assistance in the case of women prisoners must also be the same in regard to male prisoners. The lawyers must positively reach out to those sections of humanity who are poor, illiterate and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and rule of law.

#### **Alleged Custodial Death and Rape Case:--**

### **Custodial death of Shri Balwinder Singh alias kala in Gurdaspur District Punjab---**

The commission received a complaint from Shri Narang Sings alleging the death of his son Balwinder Sings alias Kala on 25th January, 1994 in police custody. It was stated in the complaint that ShriBalwinder Singh alias Kala was taken into custody by the police on 17th January,1994 for interrogation and was killed on 25th January,1994. During the period between 17th January, 1994 and 25th January,1994 the concerned Station House Officer and police officials were regularly contacted by the complainant and the police officials had, on every occasion, assured him that Balwinder Singh would be released as no incriminating evidence had been found against him. However, on 25th Jan. 1994. When some respectable persons of the area met police officials, they were told that Shri Balwinder Singh along with three others had been killed in an encounter with the police and a huge quantity of arms had been recovered from them.

ShirNarang Singh submitted to the commission that the matter be inquired into by a retired Judge as well as through its own investigating agency. The commission has called for a report on the incident from the state Government and this is awaited. The commission proposes to pursue this matter.<sup>[1]</sup>

### **Rape in police custody of T. Uma in Tamil Nadu:--**

On receipt of a report from the Collector, Kamaraja District, Tamil Nadu, about the custodial rape of T. Uma by the Head Constable of Alangulam police station, the Commission called for a report. The Government of Tamil Nadu, through their letter dated 2nd May, 1995 stated that the accused was placed under suspension and that a case under section 354 and 376 of the Indian Penal Code was registered against him on 30th September,1994. It was also stated that the inquiry report on the alleged rape was under examination and that action would be taken against the delinquents, if necessary, and that a report would be sent in due course.

The Commission considered this report in May, 1995 and commented adversely on the long delay; it also called upon the State Government to complete its scrutiny of the report expeditiously and indicate its final view quickly. Subsequently, the State Government reported to the Commission that it had accepted the findings of the enquiry officer and had come to the conclusion that Uma was indeed raped by the Head constable and that there was reasonable ground for launching criminal prosecution and simultaneous departmental action against him and other policemen who were involved in this incident. Further, considering the indigent circumstances of the family of Uma, the State Government also sanctioned Rs. 1,00,000 as compensation to Uma. While accepting the state Government's report, the Commission recommended that the prosecution should be launched without further delay and that the investigation be entrusted to a senior police officer.<sup>[2]</sup>

### **Nation policy for custodial justice to women:--**

Article I.-Respect for gender dignity and habilitative concern for women must inform all relevant institutions and personnel in the criminal justice and correctional system. Women should be show special treatment wherever they interfere with the system whether as complainants, victims, accused, witnesses or inmates of institutions.

Article II. -The State shall endeavor, as far as possible to set up specialized service and institutions with exclusive jurisdiction for meeting the needs of women coming in contact with the criminal justice and correctional system. Separate prisons and police lockups, correctional centers and separate Courts inter alia shall be set up to exclusively deal with women.

Article IV.-All substantive and procedural laws pertaining to custodialisation of women, shall meticulously respect the women's need to remain a parent and the child's need for a parent. Recognizing that children of custodialised women are innocent, the state shall conscientiously respect the rights and privileges of the children accompanying the women in custody.

Article V – institutions authorized to keep women and children in custody. And their staff, shall be inspired by same ideals and governed by the same values as above spelt out. The police, prison, correctional, probation and judicial personnel involved in the handling of women shall be specially trained and their knowledge updated in the law and procedure applicable to women.

Article IX – Taking account of the special role of women in family life and societal development, and

the vulnerability of girls the state shall endeavor to avoid the arrest and detention of females to the extent possible and without threatening the safety of the state in any manner. Save in the rarest of rare cases, to be specified, women shall not be arrested between the sunset and sunrise. Likewise, the arrest of women by the men of the police force acting alone shall be avoided.

Article X – Arrest and search of women, including interrogation, shall be conducted according to strict standards of decency, and in a manner not to violate the modesty and dignity of womanhood. In all cases when a woman is taken into custody, all existing provisions regarding protection of her person and her rights shall be scrupulously adhered to. At no stage during and after arrest, will a women arrestee be left unguarded by police women of another woman authorized by Government.

Article XI – Bail and not jail, shall be the rule of law, save in rare exceptions necessitated by nature of offence, investigation and trial. At the same time, wise circumspection shall play upon the policy of enlargement of dangerous or endangered women in custody specially in those cases where the interest of the society, and considerations of the arrestee’s safety and freedom from ensnarement by anti-social elements are not be reconciled. Protective custody is preferable to release to exploitative elements that use bail policy as cover-up strategy.

Article XII - To usher in humanism wherever women are detained in penal or other custody in addition to basic amenities and privacy, the state shall provide the essentials for meeting women’s special needs, including those promotive of her dignity.

Article XV – The state, vide article 39 – A of the constitution, is pledged to secure that the operation of the legal system promotes justice, including custodial justice. Fundamental to this rule of governance is the obligation of the state to provide free legal aid to all women in custodial circumstances, including while in police lock-up, prison, welfare home mental asylum or other, in order to ensure the rights of those in custody.<sup>[3]</sup>

There is no doubt that if these direction are carried out both in letter and in spirit, they will afford considerable protection to prisoners in police lock-ups and save them from possible torture or ill-treatment.

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