



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CRIMINAL JUSTICE ADMINISTRATION SYSTEM AND PREVENTION OF CUSTODIAL TORTURE

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Abstract

Police, Prison authorities and Judiciary are the important organs of the country who are having the responsibility to make sure that the person arrested are not detained illegally and the person who is detained legally should not be subject to any form of torture both in police station and jail .Proper and effective administration of criminal justice are in the hands of the police, prison authorities and the judiciary. It is the duty of said organs to see that laws are properly implemented for the prevention of all sorts of torture faced by the person who is arrested and detained.

Introduction

Huge violations of human rights are taking place in the custody of police and immense legislations are framed for the protection of human rights including the right to be protected from torture¹. There is a criminal justice administration system consisting of the functionaries such as the police, prison authorities and the judiciary whose duty is to implement such legislations and for preventing the occurrence of custodial torture². Each state has its criminal justice administration system for the proper execution of central and state laws relating to torture. Like this, Kerala state also has such system that has the duty to safeguard the rights of arrested person.

Each organ has an important role to play in administering criminal justice administration. Police organization is the first essential organ in the structure of the government and it is one of the strongest pillar of our democratic system. The police are having excess of powers in case

¹ Jayshree Bajoria,Getting away with torture in India, Human Rights Watch,Aug 20,2017, <https://www.hrw.org/news/2017/08/20/getting-away-torture-india>

² Role of the functionaries in criminal justice system in protecting custodial dignity,Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/150175/8/08_chapter_02.

of custody of a person but at the same time there is a misuse of such power through the violation of the rights of the arrested persons³. In order to prevent such misuse, there are lots of laws made for the protection of the rights of these detained persons. And the police have to follow the laws such as Indian Constitution, Criminal Procedure Code, Indian Evidence Act and state legislation such as Kerala Police Act, 2011 etc for the prevention of such misuse.

Prison authorities are the second most important organ and the second pillar of democratic system. Prison officers have the duty to keep the prisoners in proper and safe custody. They have the responsibility for the rehabilitation and reformation of the prisoners. They have the obligation to hear the complaints of the prison inmates relating to any torture faced by these inmates. Prisons are now not regarded as a place of punishment but a place for reformation⁴.

Judiciary is the apex body and the most significant organ of criminal justice administration. Its credibility depends on its speed, impartiality in delivering the required justice for the victim. Judiciary ranging from the supreme court to the lower court has the responsibility to see that no person is arrested illegally and to protect the rights of arrested persons who are detained according to the procedures of law. Supreme court has the power to make guidelines for prevention of custodial torture and the lower court such as the trial court has the duty to see that other organs such as the police and the prison authorities follow such guidelines while arresting a person⁵. These three above organs have an important role to play in prevention and control of all police atrocities caused to the victim of such cruel torture.

Police and Criminal Justice Administration

In India, each state has the duty to protect the life, liberty and property of each citizen and it is the police's duty to implement such duty by maintaining law and order⁶. Police has an important role in criminal justice administration by preventing and investigating crimes. The police who is the protector of human right has the duty to see that during the investigation no

³ Human rights best practices relating to criminal justice in a nutshell, National Human Rights Commission, <https://nhrc.nic.in/sites/default/files/CriminalJustice>.

⁴ The Kerala Prisons and Correctional Services (Management) Act, 2010, <http://swd.kerala.gov.in/DOCUMENTS/Act&Rules/Act/30688>.

⁵ Mandeep Tiwana, Human rights policing, landmark Supreme Court Directives and National Human Rights Commission Guidelines, https://www.humanrightsinitiative.org/publications/hrc/humanrights_policing.

⁶ Police reforms in India, PRS Legislative Research <https://www.prsindia.org/policy/discussion-papers/police-reforms-india>.

accused should be subjected to any kind of torture⁷. However the actual thing happening is that police just ignore their duty and cruelly behave to the accused by forcing these accused to torture in order to complete the investigation. Kerala is one of such states where torture is used as a common method on the person who are in custody⁸. Rajan's case is one such landmark case which is famous for the Kerala police's brutal method of torture⁹. There are other forms of torture used commonly by the Kerala police such as rocket method, aeroplane method, heavy electric shock, leg roller method etc¹⁰.

In order to prevent such torture there are various constitutional and statutory provisions which has to be followed by the police in order to administer criminal justice properly and there are also state legislations such as Kerala police Act for regulating the duties of the Kerala police in criminal justice administration in case of custody of a person.

Arrest as per the Criminal Procedure Code

In order to arrest a person, police has to follow certain provisions stated in the criminal procedure code. When a person is arrested, a police officer shall not use more restraint than it is necessary¹¹. The police officer most often use handcuff which is really arbitrary and violative of article 21 of the Constitution¹². Police officer has the duty to explain the grounds of the arrest and the details of the offences to the person who was arrested without warrant¹³. And if a person is arrested without warrant in a bailable case then he must be informed by the police that he has the right to be released on bail after giving sureties¹⁴. Police officer has the duty to inform the friends, relatives or any other person regarding the arrest and the place of arrest. And after

⁷ Implementation of UN Convention against Torture and other cruel, inhuman and degrading treatment or punishment through legislation, Law Commission of India, Report No 273, <http://lawcommissionofindia.nic.in/reports/Report273>.

⁸ Dr. H. Abdul Azeez, Violation of human rights by the police in Kerala – A study, International journal of social sciences and humanitarian invention, volume I, issue4,2014, file:///C:/Users/DOSNET/Downloads/21-Article%20Text-43-1-10-20171229%20(15).

⁹ T.V.EacharaVarier v. Secretary to the ministry of Home Affairs, Government of Kerala,1977 K.L.T.335.

¹⁰ Dr. H. Abdul Azeez, Violation of human rights by the police in Kerala – A study, International journal of social sciences and humanitarian invention, volume I, issue4,2014, file:///C:/Users/DOSNET/Downloads/21-Article%20Text-43-1-10-20171229%20(15).

¹¹ Sec 49 – No unnecessary restraint – The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

¹² Prem Shankar Shukla v. Delhi Administration, AIR 1980 SC 1535

¹³ Section 50(1) of the criminal procedure code – Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

¹⁴ Section 50(2) of the criminal procedure code – When a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

informing about this the police have to write it down into the book kept in the police station. Magistrate before whom the arrested person is produced has the duty to satisfy himself about the requirement of the sub section (2) and sub section (3) of section 50A. As per section 56, police officer has the duty to send the person arrested without warrant to the magistrate and section 57 prohibits the police from detaining the arrested person for more than 24 hrs in the police station. In case of a person is arrested under warrant of arrest than he is required as per section 76 to produce the arrested person before the magistrate without unnecessary delay. The rights of an accused granted under section 56, 57 and 76 has been constitutionally recognized and guaranteed by the Article 22 (2) of the constitution¹⁵.

Investigation by the Police as per Indian Evidence Act

When a person is arrested by the police than he should be produced within 24 hrs before the magistrate but actually what is going on is that the police within 24 hrs has to seek the remand for retaining the person in custody for investigation ¹⁶. The court grant permission due to the provision of section 27 of the Indian Evidence Act. The accused is questioned to get some information in order to discover facts as per section 27 of the above mentioned Act. Though the confession made during the time of such investigation is inadmissible as per section 25 and as per section 26 but still section 27 act as proviso stating that information leading to discovery of facts should be given to anyone including the police. Section 27 can be applied only if such discovery of facts takes place otherwise the police cannot make such confession admissible. The police here in order to get information cannot compel the arrested person by way of threat or coercion as it will be a violation of Article 20 (3) of the Indian Constitution which states that no one can be compelled to be witness against himself¹⁷.

Procedure as per Kerala Police Act, 2011

Kerala police Act states that protection and security of persons in custody is the main duty of every police officer. Police has the responsibility to see that person in their custody is safe and sound¹⁸. Police has the duty to inform the citizen who ask for the details of the persons in

¹⁵ Human rights and the law of an accused, Shdhganga, <https://shodhganga.inflibnet.ac.in/bitstream/10603/40544/9/13>.

¹⁶ Consultation paper on law relating to arrest, Law commission of India, <http://lawcommissionofindia.nic.in/reports/177rpt2>.

¹⁷ Dastagir v State of Madras AIR 1960 SC 759.

¹⁸ Kerala Police Act, 2011, Act 8 of 2011, <https://keralapolice.gov.in/media/pdf/legal-stuff/eng/kerala-police-act-2011>.

custody .Police station should be functional and alert in their duty in providing police services to all persons who need their services¹⁹.Every police officer should keep a diary to enter the names of the arrested persons and the details of the offences charged against him²⁰. Police officer should not use force against anybody and should not show unnecessary aggression²¹.And the police officer has to make sure that he must not offensively behave to any person during the time of custody²².

Present Criminal Justice Administration by the Police

There are central laws as well as state laws for the safe custody of the arrested persons but still we can see that criminal administration of these laws are not properly done in case of arrest, investigation, questioning, production of the said person to the magistrate within 24 hrs etc. Human rights are violated by the police through its failure in proper criminal justice administration. One such human right violation is the unlawful arrest of the innocent person by the police. These unlawful arrests are done due to various reasons such as falsely implication of a person in a crime, political influence, bribery offered by the opposite party²³.

There are many instances of complaints relating to unlawful arrest reported before the Kerala human rights commission. One such incident was the K.Surendran's case in which the said person Surendran was arrested unlawfully and was tortured brutally on the way to the police station. There were two witnesses who saw the sub inspector assaulting the said person named Surendran. And the state government was recommended by the commission to pay interim relief Rs. 25000/- to the petitioner Surendran²⁴.

¹⁹Section 10 of the Kerala police Act, 2011 – Police stations to be always functional – Every Police Station to be always be functional – Every police station shall always be functional for the performance of police duty and alert for those who need public service.

²⁰ Section 12 of the Kerala police Act, 2011 –Every police officer shall keep a general diary in such form as may be fixed by the government from time to time and record therein the substance of all complaint made, First Information Report, Charges, the names and details of the complainants, opposite parties and all arrested person, the details in respect of the offences charged against them and the properties including weapons that may have been seized from their possession or otherwise.

²¹ Section 29 of the Kerala police Act,2011 – Behaviour of police officer - Section 29 (2) states that police officer shall not use force against anybody or threaten that force be used or take any adverse police action or legal action unless it is necessary to carry out any lawful purpose.

Section 29 (4) states that police shall give up unnecessary show of aggression and intemperate behavior even on provocation.

²² Section 29 of the Kerala police Act,2011 states about the behavior of the police officer .Section 29(5) of this Act states that police officer shall not misbehave or use indecent language to anyone in their care or custody .

²³ Dr. H. Abdul Azeez, Violation of human rights by the police in Kerala – A study, International journal of social sciences and humanitarian invention, volume I, issue4,2014, file:///C:/Users/DOSNET/Downloads/21-Article%20Text-43-1-10-20171229%20(15).

²⁴ Case H.R.M.P, NO 401/2002, Kerala Human Rights Commission.

Illegal detention is another vital human right violation committed by the police officers²⁵. While committing such human right violation police often fail to follow the important article such as article 22 of the constitution and guidelines mentioned in the D.K Basu's case²⁶. All the victims of the infamous custodial deaths in Kerala are those which became a prey to such illegal detention. According to the article 22 of the Indian constitution no person shall be unlawful kept in police custody for more than 24 hrs but here the police officers illegally confine the arrested person within their custody for more than the allowed time.

Another important human right violation by the police is the falsely implication of an innocent person²⁷. This occurs due to the following reasons such as firstly when police have vengeance against a person in another crime, secondly due to the political influence, the police may falsely implicate an innocent person, thirdly due to the bribe received by the police. In Kerala there are lots of falsely implication case happening and one such example is the Udayakumar's case. Facts of this case was that Mani and Udayakumar was sitting in the park and two police constables came nearby and asked whether they were drunk and took some money from Udayakumar's pocket. After that immediately both of them were taken to the station and after sometime they were unconfined. Udayakumar asked for his money back and then the police got angry and brutally tortured him resulting in his death. Police then registered a false case of theft against these two people²⁸. Another important case was the Mohanan's case in which a petition was filed before the Kerala human rights commission stating about the fabrication of false crimes, harassment and torture by the sub inspector of police²⁹. Like this there are other cases in which people are unlawfully detained by the police through falsely implication.

The main human rights violation is that innocent person is subjected to various methods of torture during the time of investigation. There are various provisions mentioned in constitution, Criminal Procedure Code, Indian Evidence Act and Kerala Police Act for the safe custody of person under police custody but still the human rights of the person in custody are violated due to cruel methods of torture followed by the police in time of investigation in order to prove the

²⁵ A glimpse of the history of human rights violation by police, Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/6263/6/06_chapter%202.

²⁶ D.K. Basu v State of West Bengal A.I.R.1997 S.C.610.

²⁷ Miscarriage of Justice, Law Commission of India, <http://lawcommissionofindia.nic.in/reports/Report277>.

²⁸ WP(C) No.24258 of 2007(K), High Court of Kerala.

²⁹ CASE NO.H.R.M.P..255/2002, Kerala State Human Rights Commission.

case³⁰. Since the infamous custodial death of Rajan, there are lots of innocent ones subjected to custodial atrocities resulting in custodial death³¹.

Prison Authorities and Criminal Justice Administration

The proper and safe custody of prisoners are the fundamental duty and responsibility of prison authorities³². All person admitted to jail should be given good hygienic living conditions, food, clothing, medical care facility and free legal aid. Prison officers have the duty to protect the prisoners against unlawful aggression, unlawful punishment and hardship. The prison department are governed by the following Acts and rules such as the Prison Act, 1894, Kerala Prison and correctional system (management) Act, 2010, Right to service Act, 2012, Kerala Borstal School Act and Rules such as The Kerala Prison Rules 1958, The Kerala Sub Jail Rules and The Kerala Borstal School Rules³³. And out of these important Acts, Kerala prison and correctional system (management) Act, 2010 is one such important Act which contain some important provisions for the safe custody of the prisoners³⁴.

Kerala Prison and Correctional System (Management) Act, 2010

The Act is for the safe custody, correction, reformation and rehabilitation of prisoners. Section 4 states about the duties and functions of the director general of the prison and correctional system. The important function is to inspect prison institution and to ensure proper implementation of measures for the reformation, correctional services, rehabilitation, treatment, training of prisoners, protection of human rights and ensure discipline among officers and staff³⁵. Section 12 states about the function of the prison that is to keep in safe custody of prisoners committed to prison under any writ, order of a court or any competent authority, to provide food, clothing, adequate medical treatment and care to the prisoners, to

³⁰Nirman Arora, Custodial torture in police stations in India :A Radical Assessment, Journal of Indian Law Institute, <https://www.jstor.org/stable/43953348?seq=1>.

³¹T.V. Eachara Varier v. Secretary to the ministry of Home Affairs, Government of Kerala, 1977 K.L.T.335.

³²Madhurima Dhanuka, Under trial Prisoners and the Criminal Justice System, Common wealth human right initiative, <https://www.humanrightsinitiative.org/download/1457162682Undertrial%20Prisoners%20and%20the%20Criminal%20Justice%20System>.

³³ Acts and Rules, Kerala Prison and Correctional Services Department, http://www.keralaprisonsgov.in/index.php?option=com_content&view=article&id=50&Itemid=57.

³⁴The Kerala Prisons and Correctional Services (Management) Act, 2010, Government of Kerala, [google.com/search?biw=1304&bih=697&sxsrf=ALeKk002jN0lvPIQEW9Os9Ser9Ox6p1HA%3A1588624361038&ei=6XuwXr_0AfyP4-EP_JeigAE&q=Another+important+human](https://www.google.com/search?biw=1304&bih=697&sxsrf=ALeKk002jN0lvPIQEW9Os9Ser9Ox6p1HA%3A1588624361038&ei=6XuwXr_0AfyP4-EP_JeigAE&q=Another+important+human).

³⁵ The Kerala Prisons and Correctional Services (Management) Act, 2010, <http://swd.kerala.gov.in/DOCUMENTS/Act&Rules/Act/30688>.

take measures for the safety and security of person. Section 13 states about the duties of the officers in general. They have the duty to treat every prisoner impartially and with humanity and hear any complaint or any report made by the prisoner and provide redressal to it. Medical board just like the officer also has the duty in case of prisoners. If the board has the reason to believe that the mind of the prisoners is or is likely to be affected by the discipline or treatment to which these prisoners are subjected to then the board shall report such case in writing to the superintendent. The said superintendent shall take necessary action on such report and also send such report to the Director General together with action taken and report of medical board. These are the significant provisions to be followed by the prison authorities in order to make sure about the safe custody and security of the prisoners in jail custody.

Present Criminal Justice Administration in Prison

The verbal and physical abuses which happen in police custody are also common in prison custody and this is to make the prisoners more fearful. A person who is new to the prison is welcomed by nadayadi and such are also applied to increase the fear of prisoners towards prison officers. These prisoners are of the view that these practices are done to mentally torture them and the inmates who have money and power are not subjected to any kind of torture. The new inmates are even tortured by the other inmates and it is supported by these jail officers. These officers ignore the complaints of these new inmates about the torture of other inmates. Even these officers restrict the movement of these prisoners moving from one block to another³⁶.

According to the prison officers, these tortures caused to the prisoners are only experienced during the beginning stage of their prison life and after that stage they don't experience any torture as they have become a member of the prison. But recently a surprise scrutiny was done by the DGP at Viyyur district jail and the inmates complained about the torture they have faced inside the prison. As a result a jail doctor was asked to conduct a medical examination immediately and through this examination it was found out that there were scars and wounds on this prisoner's body which is due to the torture. There were complaint boxes kept in the jail for submitting their grievances but these prison inmates fear to lodge their complaints. As a result action was taken against these prison officers for causing torture to these inmates³⁷.

³⁶ Experiencing vocational training programmes in the prisons of Kerala, Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/174512/15/15_chapter%205.

³⁷ Thrissur: Viyyur Jail Superintendent suspended, Deccan Chronicle, <https://www.deccanchronicle.com/nation/current-affairs/070819/thrissur-viyyur-jail-superintendent-suspended.html>.

Custodial death of Rajkumar in peermudu jail shows how careless and irresponsible in doing their duty. Hewas tortured brutally by the police and then he was taken to the jail. And there he was not given any medical treatment by the prison officers. And one of the fellow inmates of Rajkumar said that even water was not given to him by the prison officer when he asked for it³⁸. These cruel acts show the cruel part played by these prison officers in violation of human rights of the prisoner in their custody.

Judiciary and Criminal Justice Administration

Universal Declaration of Human Rights, 1948 states about some of the articles for the prevention of torture and the Indian constitution closely resembles the UDHR through the articles of fundamental freedoms and directive principles of state policy³⁹. Articles of the Indian constitution such as Article 20, 21, 22 etc are the important provisions which are applicable in case of prevention of custodial torture. Constitution entrusted the duty of protecting the fundamental freedoms to the Indian judiciary and this fundamental freedoms includes the right to be protected from torture. Hence the judiciary has the duty to safeguard the dignity by protecting these fundamental freedoms.⁴⁰ Judiciary has the power to see that the other organs of criminal justice administration such as the police and the prison authorities perform their duty in case of protection of rights of arrested person and in prevention of custodial torture. It has the ultimate power to punish these authorities when these people violate the human rights of the persons in custody.

Role of Supreme Court in Criminal Justice Administration

Supreme Court played an immense role in ensuring that the police and prison authorities administer justice in case of custody of person. Through various landmark decisions the Supreme Court had declared guidelines to be followed by the authorities responsible for the safe custody of person. Since 1990, the Supreme Court has come up with two initiatives for dealing the problems such as custodial torture and custodial death. Those initiatives were first one is the right to compensation to the victims of torture and second one is the custody

³⁸SndeepVellaram, 22 Injuries, 'Falanga' torture used: Shocking Autopsy of Kerla Custodial Death Victim, One Minute, <https://www.thenewsminute.com/article/22-injuries-falanga-torture-used-shocking-autopsy-kerala-custodial-death-victim-104633>.

³⁹ Universal Declaration of Human Rights (UDHR):HistoricalPerspective,Shodhganga, https://shodhganga.inflibnet.ac.in/bitstream/10603/148743/9/09_chapter%203.

⁴⁰JithendraMishra,Custodial Atrocities, Human Rights and the Judiciary, Journal of the Indian Law Institute,Vol 47,No 4(October-December 2005) pp 508-521, <https://www.jstor.org/stable/43951999?seq=1>.

jurisprudence⁴¹. Sheela Barse v State of Maharashtra is one of the landmark cases which provides for the guidelines stating about the rights of the arrested persons including women⁴². Another important case is the D.K. Basu's case which also states in about the guidelines to be following in case of arrest⁴³. The most important guideline as per this case is that arrested person should be subjected to medical examination every 48 hrs during the time of detention by the doctor and copies of all given documents should be presented before the magistrate. Another vital guideline is that arrestee should be allowed to meet his lawyer during the time of interrogation. These landmark cases show the sincere effort of the Supreme Court in protecting the rights of the arrested persons and providing justice to the said persons. But at the same time there is a deficiency in judiciary's criminal justice administration as for example if a person is arrested for a minor offence itself, he is kept under custody for many years as under trial prisoners till the time of trial arrives. Here it takes years for the arrested person to get justice from the apex court⁴⁴.

Role of Magistrates In Criminal Justice Administration

The trial judge is the kingpin of criminal justice in the hierarchical system of administration of justice. He directly comes in contact with the accused during the proceedings of the case. And it is on him lies the responsibility of building up the case and understanding the matter.⁴⁵ Criminal Procedure Code gives powers and duties to magistrate in case of pre-trial, during trial and post-trial⁴⁶. As per article 22 (1) of the Indian Constitution the arrested person has the right to know the grounds of arrest and further the said person has the fundamental right to inform his parents or friends about his arrest. Here the magistrate have the fundamental duty as per section 50A of the criminal procedure code to make sure that police have informed the arrested person about his arrest and had made an entry about the arrest in the book maintained by the police. Magistrate has the duty to issue search warrant as per section 97 in the nature of habeas corpus for the rescue of person who is wrongfully confined by the person and such arrested person should be immediately produced before the magistrate.

⁴¹ Rukmani Seth, Custodial torture, Legal Service India .com, <http://www.legalservicesindia.com/article/297/Custodial-Torture.html>.

⁴² Sheela Barse v State of Maharashtra, (1983) 2 SCC 96.

⁴³ D.K. Basu v State of West Bengal (1997) 1 SCC 416.

⁴⁴ Dr. Seema Garg, Judicial initiatives in tackling custodial torture, International journal of law, <http://www.legalservicesindia.com/article/297/Custodial-Torture.html>.

⁴⁵ This was observed by the former Chief Justice Ranganath Mishra in the case All India Judges Association v Union of India (1992) 1 SCC 119.

⁴⁶ Criminal Procedure Code, 1973, Indian Kanoon, <https://indiankanoon.org/doc/445276/>.

Another important role played by the magistrate is that when a request is made for the medical examination of the accused then the magistrate shall direct for the medical examination of the accused. In *Sheela Barse v State of Maharashtra*, court held that the arrested person must be informed about his right to be medically examined as per section 54 of criminal procedure code.⁴⁷ Magistrate also has the duty to inform the accused person that he has the right to get free legal aid. This was held by the Supreme Court in the case *Anil Yadav v State of Bihar* commonly known as *Bhagalpur binding case*⁴⁸. Further the magistrate has the duty to inform the accused about his right to get released on bail on the expiry of statutory period of 90 or 60 days⁴⁹.

Section 164 of the Indian Evidence Act gives powers to the magistrate to record confession. Confession recorded by the magistrate is of valuable evidence and magistrate before recording the confession he has to explain to the arrested person that he is not bound to make such confession and if he does then it will be used as evidence against him. These are the duties which the magistrate has to follow when a person is detained in police custody.

Present Criminal Justice Administration by the Judiciary

Judiciary is the apex body who is the custodian of the Indian constitution and being the custodian it has the duty to protect the fundamental rights of all citizens including the right to be protected from torture. Here it is clearly evident that from lower court to the apex court it has the important role to play in criminal justice administration in case of custody of a person. In many landmark decisions, guidelines are framed by the Supreme Court for the prevention of custodial torture and the lower court such as magistrate court has to make sure that these guidelines are followed. In *Sheela Barse's* case, the Supreme Court impose an obligation on magistrate to ask the arrested person about any maltreatment that he has undergone in police custody and the magistrate has the responsibility to make the arrested person aware of his right to be medically examined as per section 54 of the code of criminal procedure code⁵⁰. In another landmark case that is *Khatri's* case, the court states that the provision which forbid detention without remand is an important provision as it enables the magistrate to verify the police

⁴⁷ *Sheela Barse v State of Maharashtra* (1983) 2 SCC 96.

⁴⁸ *Anil Yadav v State of Bihar* 1982 (2) SCC 195.

⁴⁹ *Gopinath v State* CrI.R.C. NO.257 of 2018.

⁵⁰ *Sheela Barse v Union of India*, JT 1986 136

investigation and here the magistrate has the power to punish the police if it violates the provision⁵¹. Another important duty given to the magistrate by the higher court is that in Joginder Kumar's case the Supreme Court has held that the magistrate has to make sure that the arrested person's family or relatives are informed about the arrest and the police have made an entry in police diary about the arrest⁵². But actual practice which is going on is that these guidelines and orders of the higher court are just in papers and the police don't follow it strictly and the magistrate who has the duty to see that these are followed acts carelessly in their responsibility. Recent custodial deaths are big examples which show such carelessness acts.

In Anilkumar custodial death case, the said Anilkumar was kept in the police custody for more than 24 hrs for questioning. After hard torture he was then taken to the court and he was not able to walk to the court room because of his bad health condition so the magistrate came near the police vehicle for completing the remand procedures. Here the magistrate can easily understand that the said Anil has faced cruel torture so instead of enquiring about the torture he just remanded him to judicial custody. Magistrate has the duty to see that medical facilities are given to the arrested person and here the said Anil was suffering in pain due to torture and the magistrate remain silent in its role in preventing custodial torture⁵³. This clearly shows how irresponsible the magistrate is in their role played in prevention of custodial violence.

Udayakumar case, September 2005; Sampath case, March, 2010; Sreejivcase, May, 2014 are the other sensational custodial death cases that happened in Kerala and these are the evidence to show the negligence of the magistrate in their duty in protecting the rights of the arrested person⁵⁴. In all these cases the victim is kept in custody for more than 24 hrs ,their parents or relatives are not informed , correct time of arrest is not recorded .And after detaining for more than 24 hours the police here wrote in the police record that he was kept in their custody only for 24 hours. Here such record is submitted before the court and magistrate does not make any enquiry about its truth and about the torture that the arrested person has faced in the police custody. Thus the judiciary has remained unspoken in case of human rights violation of the

⁵¹ Khatri and others v. State of Bihar and others, 1981 SCR(2)408.

⁵² Joginder Kumar v State of UP AIR 1994 1349.

⁵³ Nidheesh M.K.,Kerla govt in the line of fire over rising case of custodial deaths, police torture,livemint, <https://www.livemint.com/politics/news/kerala-govt-in-the-line-of-fire-over-rising-cases-of-custodial-deaths-police-torture-1561979104756>.

⁵⁴ Vishnu Varma,The sensational police custody killings that brought Kerala public on the streets,IndianExpress,Juky 25th,2018, <https://indianexpress.com/article/india/the-sensational-police-custody-killing-that-brought-kerala-public-on-the-streets-udayakumar5276084/>.

arrested person.

Conclusion

Custodial torture is among the worst crime in the civilized society and it is a violation of human dignity. Third degree torture has become a part of police investigation and the torture faced by the victim is unbearable⁵⁵. The three main pillars of a state such as the police, prison and the judiciary are the ones who are responsible for the proper implementation of the legislations relating to prevention of torture. Here the police do not follow the required provisions relating to arrest and custody of person and submits false reports relating to the time of arrest and other information relating to custody of persons. And the judiciary instead of questioning about its credibility, it remands the arrested person to judicial custody. Prison authorities who have an obligation to safeguard the prisoners from all torture fail in doing its duty and commit violations of human rights of these detained victims through causing torture and not providing the basic facilities. In this way the improper functioning of these pillars affects the criminal justice administration and there will be more number of custodial deaths taking place in Kerala. In order to prevent this, police, prison authorities and the judiciary should be made to strictly implement the provisions of law relating to torture as it is and any negligence in their duty should be noted and should be given punishment for not fulfilling its duty.

⁵⁵ Ekta Prakash, Custodial violence the worst crime in a civilized society, News 18, <https://www.news18.com/blogs/india/ekta-prakash/custodial-violence-the-worst-crime-in-a-civilized-society-13296-744419.html>