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on
Prevention of Torture in India

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**Judicial Inquiries: A Kerala experience with reference to
Justice Rajendra Babu Commission**

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Torture, as extreme violation of human rights, is an act of cruelty that can not claim impunity. Its purpose is to destroy deliberately not only the physical and emotional well-being of individuals but also, in some instances, the dignity and will of the entire community involved. The right of persons alleging torture to full investigation of their allegations is set in numerous international standards. Article 2(3) of the ICCPR sets out the right to an effective remedy. Article 12 of the Convention against Torture requires that “each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, where there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Investigation into deaths in custody is mandatory in India under section 176 of the Cr PC. Such inquiries are not always held, and are more likely to take place when a death in custody leads to a public outcry. They are often conducted by an executive magistrate or by a retired judge who is always subject to executive control. These inquiries are often inconclusive, which is inevitable when, as happens in many cases, magistrates depend on the police to investigate allegations of misconduct by their own forces. Inquiries into deaths in custody are often carried out by the Crime Branch of a police force which is not independent from the rest of the force. There is no witness protection program existing in India and my organization is aware of numerous cases where witnesses have been intimidated or brutally tortured by law enforcement agents to cover up their crimes.

Principle 2 of the *Istanbul Protocol (1999)* requires that the investigators should be independent of the suspected perpetrators and the agency they serve. Again, Principle 3 lays down that those potentially implicated in torture or ill-treatment be removed from any position of control or power over complainants, witnesses and their families as well as those conducting the investigation.

Section 114 of the Indian Evidence Act helps the court in deciding on whom is the burden of proof in certain situations. Well, a presumption is not in itself evidence but it makes a *prima facie* case for party in whose favour it exists. Therefore, if a young man of sound health and good habits was taken by the police in custody and was found dead on the following day, the burden is on the police to prove the actual cause of his death. The Law Commission of India in its 113th report advocated that Section 114(B) be inserted in the Evidence Act to introduce a rebuttable presumption that injuries sustained by a person in police custody may be presumed to have been caused by a police officer.

Despite several Supreme Court orders and the NHRC pursuing the issue, the recommendation has not been granted statutory status until today.

Significantly, mandatory magisterial inquiries under section 176 CrPC are available only for deaths in police custody. No such requirement exists for deaths in prison custody, or in the custody of armed or paramilitary forces. In addition, there is no requirement in law for a magisterial or any other sort of inquiry into allegations of torture not resulting in death. Victims of abuse at the hands of police or other officials are often unaware of their right to complain and have that complaint investigated.

A critique of the recent infamous Justice Rajendra Babu Commission Report on custodial violence and deaths in Kerala becomes pertinent in this context. The LDF government that is currently in power in the State had an ugly record of 18 custodial deaths in the first three months of its rule. Nevertheless, the state police consistently denied torture to be the cause of these deaths. Facing mounting pressure, on 17 August 2006, the State Government decided to order a judicial inquiry by a sitting judge into the custodial deaths in the State. However, the Kerala High Court refused to grant the State's demand to appoint a sitting Judge. The State government then appointed Justice R Rajendra Babu, a retired judge of the Kerala High Court, to conduct the probe without any consultation with the Opposition parties.

The State of Kerala has a unique record of having UDF and LDF governments intermittently for last many years. No matter the govt. is UDF or LDF, there had been instances of deaths in police custody consequent to cruel and brutal torture. However, the communist parties, particularly the CPM, are very reluctant to accept that torture happens during their regime. They would use their political cadre and party network to deliberately suppress truth to impress the people and the world outside that there are no rights violations while they are in power. In many of the 18 cases of deaths in police custody, the party loyalists and local leaders forcefully intervened and thwarted the investigation process by intimidating witnesses, fabricating material facts and political maneuverings. This was manifested in the case of late Mr. Parameswaran (27) who died at the hands of police on 23/07/2006 at Mangalamdam in Palakkad district. The area secretary of the party was personally responsible for sabotaging the police investigation.

The appointment of Justice Rajendra Babu, a known sympathizer of the CPM and who had been unscrupulously loyal to the party leadership before he was elevated to the Bench was deemed to be a deliberate attempt to save the face of the LDF Govt. The Commission was asked to investigate into complaints of torture in police custody in the State between 1st April 2006 and 16th August 2006 and was required to file its report in next three months. The Commission published a notification on 29/09/2006 asking the public and voluntary organizations to provide evidence or details of alleged torture in police custody within 10 days of the notification. On the 10th day (last day) of filing complaints, Jananeethi went to the Commission's office with a bundle of investigation reports. It was very difficult to locate the office of the Commission, even the local police station was not aware of the Commission's office. The gate was locked from outside and people in the neighbourhood said that it had not started functioning. No staff was appointed, not even basic amenities like furniture or stationary was provided. We issued a press release on the matter and hence the Commission extended the time for filing complaints to another week.

The Commission filed its report in May this year to the Government, but it has not yet been tabled in the Assembly. Hence we are not aware of what exactly has been submitted by the Commission. However, Justice Rajendra Babu said in a press conference held just after the formal submission of the report to the Chief Minister, that there were no deaths due to police torture though 8 persons had died while they were in police custody. This was the stance of the police all through. The Additional Director General of Police, Mr. Jacob Punnoose, had earlier announced that three persons died of cardiac arrest and four others died because of complications

resulting from meningitis, pneumonia, withdrawal symptoms and leukaemia and five had allegedly died after jumping into lakes and ponds having been chased by the police.

Jananeethi has reasons to believe, the Rajendra Babu Commission was intended to white-wash the criminals in the state police and to silence the critics of the LDF government. In fact, Jananeethi had constituted a facts finding team with Justice (ret'd) KK Narendran (one of the finest judges we ever had in the high court of Kerala) and other very eminent persons who had brilliant service record in the area of investigation, criminal prosecution, forensic science, media analysis, human rights, cultural criticism and documentation. Justice VR Krishna Iyer, Justice K.T.Thomas and Dr.NR Madhava Menon had agreed to be on the Advisory Board of the panel. The sudden announcement of the Rajendra Babu Commission disrupted our initiative as our judges did not want to embarrass Justice Rajendra Babu Commission counteracting its efforts. We therefore had to drop the idea of an independent investigation.

The Commission failed to ensure participation and co-operation of human rights groups, voluntary agencies and such other civil organizations that could have contributed significantly to an impeccable inquiry. Custodial torture and death in custody happened in many districts and it was not possible to collect all details in less than a week. The police were not co-operating. The witnesses were threatened by party goondas and hence were not ready to assist probing. The NGOs and human rights defenders had only media reports to rely on. Whereas, the Congress party on the opposition did lot of harm vitiating and distorting sincere investigation for mere political gains.

Let me briefly refer to two instances of custodial deaths, only to disprove the Commission's reported observation that there was no deaths in custody due to police torture.

1. Parameswaran, 27 years and s/o Velan, belonged to a scheduled caste. He was unmarried and was living with his widowed mother at the parental home at Mariappadam, Kizhakencherry Post, Alathur Taluk, in Palakkad district. He was a casual labourer and was enjoying good health. He never had any illness and was not implicated in any civil or criminal dispute.

On 22/6/06 at around 7.30 pm Parameswaran together with two of his close colleagues, Chandran and Malayan, bought a bottle of foreign liquor to share among themselves on condition that the cost had to be shared equally. But Chandran refused to pay his share and subsequently there was clash between them. Parameswaran took Chandran's valet from his pocket by force and walked away. At 9.00 pm Chandran and his brother Kuppu went to M.T.Vasudevan, the local leader of the CPM and complained against Parameswaran. The mediation of Vasudevan was not successful as Parameswaran was still under the influence of liquor. In the mean time Kuppu lodged a complaint at Mangalamdam Police station against Parameswaran. At 11.00 pm the police took Parameswaran and Malayan in custody from Vasudevan's house. According to Malayan, Parameswaran was brutally beaten at the police station by the Sub Inspector Mr.Ullas and three other constables. On the next day at 11.00 am the valet was recovered from Parameswaran's house with his help. But he was again taken back to the police station. On the way, the police assaulted him and kicked him at his chest and abdomen. The local people saw the police jeep halted at Kalavappadam and police sprinkling water on the face of Parameswaran who was motionless. The police then took him in police jeep to the Govt. hospital at Alathur where he was declared dead.

The cause of death according to the postmortem report was heart failure. But Malayan who was in the jeep and in the police lock-up at the relevant time deposed that Parameswaran was continuously beaten by the SI and three other constables. Another person who was following the jeep on a motor bike was also an eye witness of the brutal assaults on Parameswaran by the police. Later, due to the threats from the party workers, Malayan was turned to be hostile. But the fact remains that Parameswaran was assaulted and tortured at home in front of his mother during and after the recovery of the valet from his house. He had a well built body, was engaged in hazardous works like loading and un-loading in a timber mill. He never had any physical ailment or any other health complaints.

In spite of the circumstantial evidences and Supreme Court judgments and provisions in the Indian Evidence Act and international instruments, the Commission arrived at a conclusion that the death was on account of heart failure. Of course, one dies when the heart stops functioning. But why did his heart stop functioning? The police may perhaps wash off their hands as there was no arrest recorded. Nevertheless, Parameswaran was in custody over night, he was in perfect health while taken in custody, and hence the police are liable to answer our questions.

2. In another ghastly attack and torture by the police Milton, 48 years and son of Bhahuleyan, died on the 1st August 2006 at Anappuzha in Methala village, Kodungallur Taluk in Thrissur district. He was operating a country boat at Anappuzha – Krishnankotta ferry for more than two decades. With the introduction of mechanized ferry services Milton became unemployed. Therefore he opened a bunk shop near the ferry where he served coffee, tea and snacks. His mother Susheela (68), wife Shyla (39) and two children Mithun (20) who is physically disabled and Milza (17) lived with him in a small hut. He was the only bread winner of the family.

According to the police, they had information that Milton was serving illicit liquor to local labourers. Hence five police men under the leadership of P.Vahid, the Circle Inspector, went in a jeep to search Milton's bunk shop. Milton was informed of the ulterior motives of the police. Having been scared of physical torture, Milton closed the shop and ran away. The police chased him in the vehicle and finally Milton jumped into the river and swam to an island called Muringathuruth in the midst of the river. Two police constables followed him in a country boat. Therefore, Milton got into another boat and drove to a place called Cheppara. Before he reached there, the Sub Inspector of Kodungallur police station Mr.Muraleedharan and several police men in two police jeeps had stationed there to arrest Milton. Hence Milton proceeded to further south along the river. The police followed him both on the land and in waters. There are no houses or human activities along the river side for about one kilometer and the thick mangrove alongside blocked the view from a distance. Therefore no body has seen what exactly had happened to Milton who was found dead having been thrown out of the country boat. People believe that it would not have happened unless he was battered or stoned by the police. The police lifted his body from waters and took him to the hospital where he was declared dead.

According to the police, Milton died of drowning. The local people refuse to accept this. Milton was very good in swimming. As per the postmortem report, his urinary bladder was empty. Further there was a crack in his skull. He was extraordinarily healthy and in good shape. He worked in a country boat for more than 20 years and hence there was no chance of him slipping out of the boat. The villagers strongly believe that he was stoned by the police from the shores and consequently he fell off from the boat and died. The broken skull and the empty bladder are enough to substantiate our contention.

Mr. Justice R.C. Lahoti, the former Chief Justice of India, once described the inquiry commissions as a futile exercise. He said the appointment of commissions of inquiry was a diplomatic way of diverting attention of people, and termed it a "waste of time." The only way to make commissions more effective was to amend the law to make it binding on the Government to implement their recommendations. "Personally, I feel that no judge should accept the responsibility of heading commissions of inquiry unless it is guaranteed that their recommendations and findings will be implemented" said Justice Lahoti in an interview.

Sadly, there is no transparency or accountability in the working of inquiry commissions. In the case of Rajendra Babu Commission, there were quite a few NGOs and Community Organizations including my own organization ready with reliable evidences, sufficient to prove tortured deaths in police custody. But apparently we have no clue whether the Commission has taken note of our submissions. We had no opportunity to verify that the Commission had considered our representation. On the other hand, if the Commission had organized a workshop of the participated NGOs and COs and presented a draft report for perusal, they could have challenged the omissions or raised their objections. The present report is arbitrary; its conclusions are likely to be wrong because the Commission had failed to give a fair hearing to the afflicted and the affected. Further, the Commission did not take any interest in contacting witnesses nor had given any heed to political manipulations there on. Section 12(i) of the Protection of Human Rights Act, 1993 emphasizes that the efforts of NGOs and institutions working in the field of human rights must be encouraged. Unfortunately the Commission paid no attention to community participation where the public had much to contribute.

One positive thing the Rajendra Babu Commission recommended, as we understand from his press conference, is that the Commission has strongly endorsed the recommendations of Justice K.T.Thomas Commission for the improvisation of police department. Justice K.T.Thomas, K.P.Rajagopalan Nair IPS (retd DGP) and T.N.Jayachandran IAS (retd.chief secretary) were made Kerala Police Performance and Accountability Commission in 2005. Unfortunately there is no mention in their report on custodial torture or deaths in police custody. The only proposal it made on complaint redressal was regarding a police complaint box that should be kept in every office of the local body (Corporation, Municipality and Panchayat) and not in any police station, under the lock and key of the head of the local body.

Before concluding this presentation I would like to point out the importance of one area that has not been given due weightage in our perception of administration of criminal justice. It is 'Therapeutic Jurisprudence'. The experience of Jananeethi for more than one and half decades dealing with victims of police brutality, torture and organized violence (that also include domestic and sexual violence) is that mere monetary compensation or imprisonment of the offender does not adequately heal the wounds inflicted on the mind,

memories and feelings of the victims unless they voluntarily forgive the perpetrators of the offence. It is a psychological construct, possible only through a clinical process. Law takes here the role of a therapeutic agent. It is an interdisciplinary enterprise between law, psychology, psychiatry, criminology, criminal justice, public health and philosophy. Therapeutic Jurisprudence utilizes the psychological knowledge to determine ways in which existing laws and law reforms can enhance the well-being of people afflicted by torture, cruel and inhuman treatment and organized violence. Further, it explores how, consistent with the principles of justice, knowledge, theories and insights of the mental health and related disciplines can help the development of law. What the wrong doers say and do after having committed a wrong, can influence the victim's forgiving process. Although the difference is not significant, victims are notably less forgiving when the wrong doers offered excuses. More over, we have noticed in our "access to justice" programmes that forgiving leads to improvement of mental health.

Hence, we need to set judicial procedures that promote therapeutic jurisprudence. My organization, Jananeethi, over the years has taken pains to successfully develop systematic approach in psycho-legal therapeutic services for the victims of torture and organized violence. Rooted in democratic principles, it upholds our vision and faith: *Justice is healing.*

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