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## FROM CUSTODY TO COFFIN: A LEGAL AUTOPSY OF STATE VIOLENCE

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### INTRODUCTION

#### *WHO WILL POLICE THE POLICE?<sup>990</sup>*

*What happens when the protectors of the law become its violators?*

Custodial torture and death strike at the heart of the heart of constitutional democracy and the rule of law. In a country that enshrines the right to life and personal liberty under Article 21 of <sup>991</sup>the Constitution of India, the routine abuse of power by law enforcement authorities raises serious legal and ethical questions.

The case of *Rajakannu v. State of Tamil Nadu* <sup>992</sup>is a stark reminder of a grim reality faced by marginalized individuals in the criminal justice system. It not only exposes the brutality of custodial violence but also underscores the judiciary's critical role in upholding fundamental rights, awarding compensations and ensuring state accountability.

Indian Judiciary played a crucial role in preventing custodial torture through directives issued in various cases including *D.K Basu Case*<sup>993</sup>, *Arnesh Kumar Singh Case*<sup>994</sup> and others. The main question, however, is whether the judiciary has given so many judgements for the prevention of custodial tortures and deaths, then why do we find cases related to these issues? Are these judgements just on paper and are not actually implemented in real life?

Police is the executive body in India, and it is their role to execute the judgements given by the judiciary. The main issue in the case of *Rajakannu v State of Tamil Nadu* <sup>995</sup>was the death of *Rajakannu* due to custodial torture. Therefore, the main problem in this case was the investigation against the police themselves who are supposed to protect society and not become a threat to society.

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<sup>990</sup> Prem Chand (Paniwala) v. Union of India, AIR 1981 SC 613, (1981) 1 SCC 639 (India).

<sup>991</sup> INDIA CONST. art. 21.

<sup>992</sup> *Rajakannu v. State of Tamil Nadu*, H.C.P. No. 711 of 1993, (1994) 2 LW (CrI) 680 (Madras High Court).

<sup>993</sup> *D.K. Basu v. State of W.B.*, (1997) 1 SCC 416, AIR 1997 SC 610 (India).

<sup>994</sup> *Arnesh Kumar v. State of Bihar*, AIR 2014 SC 2756, (2014) 8 SCC 273 (India).

<sup>995</sup> *Rajakannu v. State of Tamil Nadu*, H.C.P. No. 711 of 1993, (1994) 2 LW (CrI) 680 (Madras High Court).

## FACTS OF THE CASE

### PETITIONER

- Petitioner (Parvathy) and her husband (Rajakannu) were daily wage agricultural laborers having four children, Mariappan, Ravi, Selvam, Chinnaponnu.
- On 20<sup>th</sup> March 1993, the petitioner alleged that Rajakannu left the house at about 6 A.M. in search of work.
- On the same day at around 12 P.M. Sub Inspector of Kammapuram Police Station along with five other police officers took Petitioner, her two sons Mariappan and Ravi and her brother-in-law Ratnam to the police station 20km away from their village.
- While they were in police custody, the Sub Inspector tortured them and at around 10 P.M. he left the police station.
- Next day when Rajakannu got to know about this, he went to the police station, the police detained him and let the others go.
- The next day she went to the police station to give some food to her husband but to her horror she saw him tied to the window bar and was beaten up from both sides.
- Due to all this he fainted and could not eat anything. Due to all the beating, the condition of the petitioner and Rajakannu deteriorated and a homeopathic doctor who lived near the police station was called. He gave some injections and applied ointment on the wounds of Rajakannu and Parvathy.
- The petitioner then left the police station and took a bus at 3:30 P.M. and reached her village at 6 p.m.
- Before she even reached her village the police informed some of the villagers that Rajakannu had escaped from custody and he was missing.
- The petitioner then started searching for her husband and when her efforts failed, she sent a telegram to the Chief Minister of the State and Chief Justice of Madras High Court.

- Subsequently she filed a writ petition of habeas corpus under article 226 of the Constitution of India.
- The Court admitted the petition on 21.04.1993.

### RESPONDENTS

- The third respondent said that he investigated into the matters of the missing person report and found that Rajakannu was last seen Panneerselvam at Mundarakuppam village, Neyveli, at about 9 p.m. on 22.03.1993.
- The fourth respondent in his counter-affidavit narrated the events.
- According to him, on 20.03.1993, Kadirvel Padayachi, son of Ponnusamy Padayachi of Gopalapuram Village filed some complaint with him for an offence of theft. The complainant had alleged that some people trespassed into his house on the night of 19th March 1993 and committed theft of jewelry of about 43 sovereigns valued at Rs.1,30,000/-.
- This was registered in Crime No. 107/93 for an offence under Ss.457 and 380, Indian Penal Code (now section 331 and section 305 of The Bharatiya Nyaya Sanhita.)
- According to this story, Police took Rajakannu to police station for investigation and he ran away from the police custody.
- The respondent denied all the claims of assault on petitioner and Rajakannu while they were in police custody.

Later this case was given to CID for investigation as per the order dated 29.04.2024.

Accordingly, the police in Crime Branch CID registered Crime No. 5/94 and Thiru. B.Perumalswamy, an officer belonging to the Indian Police Service, and who is holding the Office of the Inspector General of Police, CB, CID, Madras, took up the investigation, recorded or got recorded the statements of the witnesses for the prosecution under Section 161 Cr.P.C <sup>996</sup>(

<sup>996</sup> Sec 161, Code of Criminal Procedure, 1973 (India).

now section 180 of The Bharatiya Nagarik Suraksha Sanhita<sup>997</sup>).

At the later stage of the investigation a dead body in the other district was found which matched the investigation. The identification of the dead body and the cause of death, the time of death and other circumstances together with the report submitted before us disclose offences punishable on various counts including under Section 302, I.P.C<sup>998</sup>. and 302 read with Section 34, Sections 218<sup>999</sup> and 220<sup>1000</sup>, I.P.C ( now section 103<sup>1001</sup> read with section 3(6),<sup>1002</sup> section 256<sup>1003</sup> and 258<sup>1004</sup> of the Bharatiya Nyaya Sanhita) establish the place of occurrences as the Kammapuram Police Station and identify the offenders including the fourth respondent.

The petitioner was given compensation and land in the judgement of the case and that monetary compensation was so given by the court that it is beneficial for the petitioner and someone else cannot misuse it. Respondents were sentenced to fourteen years of imprisonment with hard labor.

### PROCEDURAL LAW

This case mainly deals with arrest, custodial torture, and subsequent death of Rajakannu.

The police, however, did not follow the proper procedure prescribed under the procedural law Code of Criminal Procedure. As per the petitioner, police officers came to her village and took her, her two sons and her brother-in-law with them to the police station. Section 41<sup>1005</sup> and 41A of Code of Criminal Procedure<sup>1006</sup> (now section 35 of Bharatiya Nagarik Suraksha Sanhita<sup>1007</sup>) clearly states that if the offence is punishable for 7 years or less, police can only make the arrest if any of the five

conditions given under Section 35 (1) (b) of Bharatiya Nagarik Suraksha Sanhita<sup>1008</sup> are satisfied otherwise notice of appearance is to be sent to the accused. However, in this case no such conditions were satisfied and therefore it was unfair on the part of the police to arrest the accused. Also, police arrested the family members of the accused and not the accused initially, which was a noticeably big mistake on the part of the police since it was against the law.

Since the petitioner Parvathy was a woman, as per section 43 of Bharatiya Nagarik Suraksha Sanhita<sup>1009</sup> (section 46 of Code of Criminal Procedure<sup>1010</sup>) a woman must be arrested by a woman police officer and no other police officer is allowed to touch that woman. In the following case, the contrary happened in this case and again that was against the law.

Rajakannu was detained in police custody on 21.03.1993 and he allegedly ran away from custody on 23.03.1993 which means he was in police custody for 48 hours. As per section 58 of Bharatiya Nagarik Suraksha Sanhita<sup>1011</sup> (Section 57 of Code of Criminal Procedure<sup>1012</sup>) police is only allowed to detain a person in custody for 24 hours and they have to present the arrested person in front of the magistrate within 24 hours. If the arrest time exceeds 24 hours, it is termed as illegal detention which is violative of both sections of Bharatiya Nagarik Suraksha Sanhita and fundamental rights of the accused.

Even if police wanted to keep the accused in the custody for further investigation, as per the procedural law of India, police is expected to get a remand order from the magistrate under Section 187 of Bharatiya Nagarik Suraksha Sanhita<sup>1013</sup> (section 167 of Code of Criminal Procedure<sup>1014</sup>) which states that police can keep the accused in the custody for 15 days so that police can complete the investigation in the

<sup>997</sup> Sec 180, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>998</sup> Sec 302, Indian Penal Code, 1860 (India).

<sup>999</sup> Sec 218, Indian Penal Code, 1860 (India).

<sup>1000</sup> Sec 220, Indian Penal Code, 1860 (India).

<sup>1001</sup> Sec 103, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1002</sup> Sec 3(6), Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1003</sup> Sec 256, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1004</sup> Sec 258, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1005</sup> Sec 41, Code of Criminal Procedure, 1973 (India).

<sup>1006</sup> Sec 41A, Code of Criminal Procedure, 1973 (India).

<sup>1007</sup> Sec 35, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1008</sup> Sec 35, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1009</sup> Sec 43, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1010</sup> Sec 46, Code of Criminal Procedure, 1973 (India).

<sup>1011</sup> Sec 58, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1012</sup> Sec 57, Code of Criminal Procedure, 1973 (India).

<sup>1013</sup> Sec 187, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1014</sup> Sec 167, Code of Criminal Procedure, 1973 (India).

more efficient manner but that did not happen in this case and Rajakannu was kept in the custody for 2 days without any special order from the magistrate.

As per section 56 of Bharatiya Nagarik Suraksha Sanhita <sup>1015</sup>(55A of Code of Criminal Procedure<sup>1016</sup>) states that police shall take reasonable care of the health and safety of the accused. In the following case, when Rajakannu fainted, police called the homeopathy doctor and gave him injections. However, soon after they started beating him again which is the clear violation of this section.

In custodial deaths, Magistrate is empowered to hold inquiry under Section 196 of the Nagarik Suraksha Sanhita, 2023. At present, Magistrate includes both Judicial Magistrate and Executive Magistrate. However, in People's Union for Civil Liberties v. State of Maharashtra<sup>14</sup>, the Supreme Court held that the inquiry in the cases of death by police torture must be invariably conducted by Judicial Magistrate who is empowered to take cognizance of offences under Section 176 Code of Criminal Procedure<sup>1017</sup> (now Section 196 of the Nagarik Suraksha Sanhita<sup>1018</sup>, 2023). It is opined that the inquiry of custodial deaths may be conducted by Judicial Magistrates rather than Executive Magistrates for a fair trial.

Overall, in this case the police were negligent with the whole arrest process and did not follow the procedure established by the law. So, the main question which arises is whether the laws made for the protection of the accused only on paper and is not implemented for the actual protection of the accused?

### CRITICAL ANALYSIS

Is custodial torture a method used by police to complete the investigation in time? This method may lead to increase in the number of convictions, but it is violative of the main essence of the procedural law of India that is

Article 21 <sup>1019</sup>Right to Life. I agree police is under a lot of pressure and there is in many cases political influence and pressure included as well but the laws should be made in such a way that it protects the rights of the accused in the police custody which is not only on the paper but also actually implemented in real life.

One of the main motives behind the custodial torture is to extract the confession from the suspect which is against Article 20(3) <sup>1020</sup>Right against self-incrimination. The criminal justice system of India believes in the innocence of the accused until proven guilty but in reality the police do the investigation in a manner where they presume that the accused is guilty and therefore, they try to get the confession from the accused even by using force.

A movie *Jai Bhim* was also made on the case of *Rajakannu v State of Tamil Nadu* <sup>1021</sup>which shows the police brutality and what happened in the case. The sad truth however is that not many people are aware of this movie or what happens to under-trial prisoners or arrested people in police custody because these cases are rarely reported. In 2019, India estimated 1723 custodial deaths have occurred which constitutes approximately five deaths every day. It is an alarming figure. The constitution of India and other laws give a lot of safeguards to the accused, but the major issue is that people are not aware of these rights since most of the population in India is illiterate and therefore even with so many progressive judgements and laws for their protection at the end they suffer at the hands of the police.

The judgement primarily focused on individual accountability, punishing the officers directly involved in the crime. However, it did not address the broader institutional factors that enable custodial violence which may lead to death in some cases like the case at hand such as lack of oversight, inadequate training, and the culture of impunity with

<sup>1015</sup> Sec 56, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1016</sup> Sec 55A, Code of Criminal Procedure, 1973 (India).

<sup>1017</sup> Sec 176, Code of Criminal Procedure, 1973 (India).

<sup>1018</sup> Sec 196, Bharatiya Nagarik Suraksha Sanhita, 2023 (India).

<sup>1019</sup> INDIA CONST. art. 21.

<sup>1020</sup> INDIA CONST. art. 21, cl. 3.

<sup>1021</sup> *Rajakannu v. State of Tamil Nadu*, H.C.P. No. 711 of 1993, (1994) 2 LW (CrI) 680 (Madras High Court).

in the police force. Therefore, even after so many years custodial torture and death is still a serious issue which the Indian judiciary fails to address.

The compensation awarded in this case was discretionary therefore no proper guidelines or limit was set for future reference leading to possibility of injustice to the family of the deceased who died in the police custody. There is a need for standardized criteria to ensure uniformity in awarding compensation by the court.

Article 14 of the Indian Constitution<sup>1022</sup>, which is Right to Equality. But in this case, there was prejudice against the lower caste people which led to arrest. So as a society we have failed to give them an equal chance of being heard and equality in general. Judiciary has also failed to protect the lower caste people who have no idea about their rights, neither do they have adequate money to hire someone for representation, and the judiciary has failed to keep these things in mind, which leads to wrongful convictions of these people and deaths in custody. Article 15 of the Constitution of India<sup>1023</sup> states that every person has a right against discrimination. Although if we look closely into the real world, people who are repressed stay repressed all their life and there is zero effort from the side of government and judiciary to help them come out of their vicious cycle.

Universal Declaration of Human Rights (UDHR) prohibits torture and cruel, inhuman, or degrading treatment or punishment under Article 5. While not legally binding, it sets a moral and ethical standard for human rights protection. International Covenant on Civil and Political Rights (ICCPR) also prohibits torture and cruel, inhuman, or degrading treatment under Article 7. It requires states to ensure that any person whose rights are violated has an effective remedy. Although these are international laws, they do set moral and ethical

standards which all the countries must follow to protect its on citizen.

However, I am not completely denying the fact that judiciary has given judgements in favor of the rights of the accused. In the case of D.K. Basu v. State of West Bengal<sup>1024</sup>, the court gave guidelines for arrest so that arrest is made in a proper manner to protect the accused.

In case of Arnesh Kumar v State of Bihar,<sup>1025</sup> the Supreme Court issued guidelines to prevent unnecessary arrests and detention by police officers and Magistrates. In a cognizable offence, the police officer shall serve notice to the accused to appear before him. He shall submit the checklist stating the reasons for such an arrest while producing the accused before the Magistrate. After perusing the checklist, the Magistrate upon being satisfied with the reasons mentioned in the report shall detain the accused.

In Prem Shankar Shukla v. State (UT of Delhi),<sup>1026</sup> the Supreme Court of India categorically held that the routine handcuffing is prima facie inhuman, unreasonable, arbitrary, and violative of Article 21 of the Constitution of India<sup>1027</sup>. It also issued directives that the police officer must show reasons to the Presiding Judge behind handcuffing a person and shall obtain Judge's approval. The Judge shall authorize the use of handcuffs only when there is no other reasonable way to prevent escape in such circumstances.

All these judgements came after the case of Rajakannu v. State of Tamil Nadu<sup>1028</sup> and therefore there were several problems in this particular case which the court failed to discuss. There was evidence tampering and conspiracy, but the court did not take any notice of that but the monetary in my opinion was adequate and

<sup>1024</sup> D.K. Basu v. State of W.B., (1997) 1 SCC 416, AIR 1997 SC 610 (India).

<sup>1025</sup> Arnesh Kumar v. State of Bihar, AIR 2014 SC 2756, (2014) 8 SCC 273 (India).

<sup>1026</sup> Prem Shankar Shukla v. Delhi Admin., AIR 1980 SC 1535, (1980) 3 SCR 855, (1980) 3 SCC 526 (India).

<sup>1027</sup> INDIA CONST. art. 21.

<sup>1028</sup> Rajakannu v. State of Tamil Nadu, H.C.P. No. 711 of 1993, (1994) 2 LW (CrI) 680 (Madras High Court).

<sup>1022</sup> INDIA CONST. art. 14.

<sup>1023</sup> INDIA CONST. art. 15.

well thought of and judiciary did an exceptional job while listening to the arguments and initiating further investigation in order to know the truth. So, one good thing about this case was the bench who were impartial even though the respondents were police. Judiciary does not usually pass a judgement against the executive because of the whole power dynamics of India. Therefore, whenever judgements are passed against the executive, the division of power and role of judiciary in upholding the law is clearly seen.

### CONCLUSION

Although the right to life and personal freedom are unalienable, the high number of incidents of violence and fatalities in prisons demonstrates otherwise. In Rudul Shah vs. State of Bihar<sup>1029</sup>, the Supreme Court ruled that the state must compensate the victim when any fundamental rights are violated. In Nibati Behera v. State of Orissa<sup>1030</sup>, the Supreme Court established the right to compensation in cases involving custodial deaths, which is also acknowledged globally by the International Covenant on Civil and Political Rights. However, the question remains: Is it possible to get compensation for this?

Preventing torture in detention and making ensuring that its regulations are strictly followed in cases of custodial deaths are two of the NHRC's key goals. However, its efficacy is seriously questioned. The lives of those in judicial detention must be reformed. Legitimate measures must be used to raise citizens' understanding of their fundamental rights in order to achieve the same. CCTV installation and upkeep to monitor police activity. To enhance India's whole criminal justice system, the judiciary should act strictly in certain situations.

The soul of the procedural law of India, BNSS is article 20<sup>1031</sup> and 21<sup>1032</sup> and these cases are just a

proof that the basis on which BNSS was made is compromised and what is more devastating is that no proper justice is given to victims of custodial torture wherein police has so much power that people who are given the responsibility to protect the people are responsible for the death of arrested people. Whatever the reason might be, the pressure of higher authorities or something else, Article 21<sup>1033</sup> clearly states Right to Life and what police do with the arrested person is beyond any of their power and is violative of Article 21.<sup>1034</sup>

All the judgements the court has passed till date is clearly not sufficient to protect the arrested person and therefore legislative should make laws and judiciary should take strict actions against the police in order to create deterrent because raping someone while they are in custody, killing someone, torturing them is just inhuman and no one should ever go through that. Lastly police should also be given training and unbiased supervisor should be appointed in every police station who has nothing to do with any investigation so that there is no pressure on that person of filling a police report which means he will act as a supervisor to make sure police is not using any force in order to get a confession from the accused, no rights of the accused is violated and there is no illegal detention as well.

"Darkness cannot drive out Darkness, only light can do that" said Martin Luther King Junior.

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<sup>1029</sup> Rudul Sah v. State of Bihar, AIR 1983 SC 1086, (1983) 4 SCC 141 (India).

<sup>1030</sup> Nilabati Behera v. State of Orissa, AIR 1993 SC 1960, (1993) 2 SCC 746 (India).

<sup>1031</sup> INDIA CONST. art. 20

<sup>1032</sup> INDIA CONST. art. 21.

<sup>1033</sup> INDIA CONST. art. 21.

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