

# JOURNAL FOR LAW STUDENTS AND RESEARCHERS

**DR. ASHWANI KUMAR V. UNION OF INDIA AND ORS.** (A Case Comment)

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## INTRODUCTION

A recent Judgement passed by the Supreme Court in the 5<sup>th</sup> September discussed the need of a separate law against custodial torture. The petition filed laid a distinctive demand of having an entirely separate legislation for the Country which deals with Custodial Torture. Another point of law to be discussed in the judgement is the scope and extent of the doctrine of separation of powers, which is being discussed long since Keshavananda Bharti Case.<sup>1</sup> The petition was filed by renowned Senior Advocate Dr. Ashwani Kumar but unfortunately, this petition was dismissed by the Supreme Court citing various reasons amongst one which said that the issue has been laid before the Law Commission for its perusal and that soon something worthy is expected to come out of it.

## BACKGROUND.

The petition by Dr. Ashwani was premised on the UN Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment.<sup>2</sup> The Convention was opened for signatures in 1984, although India took 13 years to sign the same in 1997. India till date has not ratified the same. The petition was argued on various premises focussing largely on the need of the hour in India for a law relating to Custodial Violence.

## CUSTODIAL VIOLENCE.

Numerous cases were discussed by the Counsel for the Petitioner while arguing this Writ under Article 32 of the Constitution of India, mostly relating to Custodial Violence. Some of which have been discussed below. D.K. Basu v. State of West Bengal talked about the gross injustice done to the prisoners in the form of denigration of an individual out of fear, rage and despair.<sup>3</sup> Sunil Batra v. Delhi Administration<sup>4</sup> talked about the violence by Police Officers on the prisoners. This case dealt with an iron rod being inserted in the body of a prisoner when he was in the four walls of a prison. Serious guidelines were laid by the Court in the case to prevent any such future violence. In another Francis Coralie Mullin v. Union Territory of Delhi, the meaning of the word degrading treatment was discussed and the Court held that irrespective of the gravity and seriousness of the offence committed by the prisoner, he should not be subjected to the degrading treatment.<sup>5</sup> Lately, K.S. Puttaswamy v. Union of India stated that the right to privacy is a fundamental right and the violation of this would result in the breach of intrinsic bodily right of such person.<sup>6</sup> A report that was put before the 3-judge Bench was that of Asian Centre for Human Rights which said that around 1530 deaths in Judicial Custody and around 144 of them in Police Custody took place, making the total number to 1674 in the year 2017-18.

<sup>1</sup> His Holiness Keshavananda Bharti v. Union of India, (1973) 4 SCC 225.

<sup>2</sup> UN Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment, 1984.

<sup>3</sup> D.K. Basu v. State of West Bengal, (1997) 1 SCC 416.

<sup>4</sup> Sunil Batra v. Delhi Administration, (1978) 4 SCC 294.

<sup>5</sup> Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 SCC 608.

<sup>6</sup> K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1. [Jlsrjournal.in](http://Jlsrjournal.in)

## **UN AND THE INDIAN CONSTITUTION.**

Since this is not the first time when a law needs to be made on some issue which has its premises laid on an UN Convention, special emphasis needs to be laid this time as there have been several instances in the recent past where this issue has been discussed. Article 53 of the Indian Constitution read with Article 253 of the Constitution make it crystal clear for the reader to know that the constitutional imperative is to bring the Constitution of India and International Laws and Convention in consonance with each other. Where the National Human Rights Commission has already heard this issue and gave a report on the same in 2017, earlier in 2010 a similar finding was given by the Select Committee of Parliament.

## **SEPARATION OF POWERS.**

The Doctrine of Separation of powers has been largely discussed in the judicial precedents lately. Although, it is a matter of fact that the doctrine is not a recent one and is being largely discussed since the landmark Keshavananda Bharti case. In the Keshavananda Bharti case, it was held that though the doctrine is not well enshrined in the Constitution, it forms an essential part of the basic structure doctrine.<sup>7</sup> The doctrine of basic structure essentially talks about the co-relation between the Judiciary and the Legislature, although it forms a system of checks and balances between the 3 organs of the Government, the Executive, Judiciary and Legislature. What comes as a matter of fact in the doctrine is that where the parliament enacted law is not strict in its interpretation and can anytime be overseen and declared void/unconstitutional, on the other hand the judicial pronouncements by the Courts are not too strict and can be over read by the Validating law passed by Parliament.<sup>8</sup> However, in Binoy Viswam case the Court discussed that the powers of a Government have to be exercised by the 3 organs of the State and that each organ should have a mutual respect for the other organs to ensure that every organ acts within its mandate.<sup>9</sup>

## **ANALYSIS.**

The Court has tried to pull its hands away in the instant case when the Petitioner asked for directing Parliament for the enactment of a law relating to Custodial Violence as it said that when the same issue had already been sent to the Law Commission of India for its perusal. It does not come as an amazement that Laws in India are enacted only when there looks to be a very urgent need for the same. A comparative analysis can be drawn out of the Rape cases or Cases of Sexual Violence with children. Beginning from the Delhi Rape Case of 2012 where a young girl was gangraped in a moving bus, to the numerous incidents of child sex abuse till date, there have been many changes in the law, the recent one being the Amendment brought in the POCSO Act in 2019. Similarly, if we talk about the cases of custodial violence, they begun from the very famous Sunil Batra case and numerous others which happened in and around the same time period. SO, what could be drawn as a conclusion to this is that till there is no such major happening in recent times related to Custodial Violence, my personal opinion is that Government would not bother to make any such legislation, that too at a time when the issue is already pending consideration before the Law Commission.

<sup>7</sup> Supra note 1.

<sup>8</sup> *Shri Prithvi Cotton Mills Ltd. and Anr. v. Broach Borough Municipality and Ors.* (1969) 2 SCC 283

<sup>9</sup> *Binoy Viswam v Union of India*, (2017) 7 SCC 59. [Jlsrjournal.in](http://Jlsrjournal.in)

## **CONCLUSION.**

From the failed implementation of the Malimath Committee Report on Criminal Justice System (2003), it can be easily inferred that the suggestions are not easily welcomed by the Parliamentarians and law is not made till there is a very strong urge or reason for its making. The opinion on custodial violence on the delayed making of law is not biased and gives similar examples from the recent past. In the meantime, what we as responsible citizens of India can do is to have patience and faith in the Parliament or the Judiciary till the time any of these speaks out on the issue of Custodial Violence.

