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# Arrest Intimation Procedure: An Insight into The Compliances and Flagrant Breaches Committed During Custody

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## ABSTRACT

*Whenever the aspect of remanding a person to custody is brought about, the ingredient of communication to kith and kin cannot be overlooked. There are plethora of instances of human rights violation in the rooms of lockup with the hues and cries of help resounding and echoing the walls, which always ends up in vain with no one to answer. For comprehending the nexus between custodial deaths and communication of arrest to the next friend, in light of the instances referred above, it can be said unambiguously that it is essential to communicate the arrest, as the consequence of non-intimation of arrest can be devastating. In many custodial deaths, seldom the nearest known person or relative has been informed about the arrest. It can be succinctly put that, in one way or another, non-communication of the information about arrest gives room for gross violation of rights in custody, as a repercussion of which custodial deaths happen unabatedly. In the event of a arresting a person, when the investigation cannot be completed the arrested person is subjected to custody U/s.167 (2) Cr.P.C, and that the custody can be Judicial custody or when the police has requested for custody in order to investigate, it can be a police custody. It cannot be used for inflicting pain and suffering upon a detained person and treating in boisterous and repugnant manner which is inhumane and endangers the very existence of a detenu when it is perpetrated.*

## I. INTRODUCTION

The right to be communicated about the arrest made is a duty vested with the Police personnel arresting a person so as to inform the arrest to a nominated person who could be a friend or relative of the arrested person. This is a compliance which cannot be deviated. This mandate of arrest intimation was inserted in the Criminal Procedure Code, by Act 25 of 2005, (Shortly referred to as Cr.P.C), through Section 50A of Cr.P.C, by which the procedure of arrest intimation has been made as an obligation and made as a duty cast upon the Investigation Officer or the Police Officer causing the arrest of any person. Besides Section 50 A, the other

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provision that envisages the aspect of communication of arrest to a friend or relative is, Sec.41-B(C), and that, the said provision impresses upon attestation of signature by a relative or friend in the Arrest Memorandum served upon the accused. It is pertinent to mention here that, section 41-B(C) was inserted by Act 5 of 2009, and that, the right of arrested person to meet an advocate of his choice during interrogation was inserted by Act 5 of 2009.

It is indispensable to draw reference to the Judgment of Hon'ble Supreme Court in **D.K.BASU Vs. STATE OF WEST BENGAL**<sup>2</sup> wherein the eleven commandments that has to be adhered at the time of arrest and detention, has been adumbrated, amongst which, the right to inform the arrest to a friend or relative or other person known to the arrested person is encapsulated as a part and parcel of the procedure laid down. According to a report published by the Asian Centre for Human Rights, titled Torture in India 2011, as many as 1504 custodial deaths were reported to the National Human Rights Commission from April 2001 to March 2010. It is appalling to note that, a majority of the detained person have succumbed and perished within a few hours of their custody. Notably, in a report published in Indian Express, captioned as 'The tortured Bill', the number of custodial deaths between 2008 -2009, is figured at about one thousand. Right from the inception of the institution to enforce law and order, there has been flagrant infraction of the well cherished right of liberty at various instances. A recap of certain ghastly events cannot be overlooked which has paved for evolution of this procedure. In **NILABATI BEHARA Vs. STATE OF ORISSA**<sup>3</sup> the Hon'ble Supreme Court came to the aid of a hapless mother who had lost her son to the violence inflicted in custody at the hands of Orissa State Police. In *Nilabati Behra's* case, the Hon'ble Supreme Court came down heavily on the State Police for the violence perpetrated on the detenu in custody, under the cover of interrogation. In this Judgment, the classification of rights available in public law and private law was distinguished and it was made vivid that, the immunity of sovereign defence would not be available in public law proceedings under Article 32 or Article 226 of the constitution.

The scars of horrendous and abhorrent event of the infamous 'Bhagalpur blindings' in Bihar cannot be annihilated from the time line of law enforcement in India. The ghastly event involved pouring acid in the eyes of under trial prisoners, leading to one of the touchstone Judgments, namely **KHATRI Vs. STATE OF BIHAR**<sup>4</sup>. Equally, one could not forget the egregious violation of human rights in the '*Hashimpura Massacre*' by the Provincial Armed constabulary in Uttar Pradesh, killing scores of young men, in the name of law enforcement,

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<sup>2</sup> A.I.R. 1997 S.C. 610.

<sup>3</sup> AIR 1993 SC 1960.

<sup>4</sup> AIR 1981 SC 928

eventually leading to the perpetrators having been incarcerated in the long drawn legal battle. In the *Hashimpura* case, 38 men were killed by the PAC, by unlawfully detaining them, as they were picked up and confined in a PAC truck and were taken to an isolated place, forced to hang down their heads and were shot dead.

Whenever the aspect of remanding a person to custody is brought about, the ingredient of communication to kith and kin cannot be overlooked. There are plethora of instances of human rights violation in the rooms of lockup with the hues and cries of help resounding and echoing the walls, which always ends up in vain with no one to answer. For comprehending the nexus between custodial deaths and communication of arrest to the next friend, in light of the instances referred above, it can be said unambiguously that it is essential to communicate the arrest, as the consequence of non-intimation of arrest can be devastating. In many custodial deaths, seldom the nearest known person or relative has been informed about the arrest. It can be succinctly put that, in one way or another, non-communication of the information about arrest gives room for gross violation of rights in custody, as a repercussion of which custodial deaths happen unabatedly. In the event of a arresting a person, when the investigation cannot be completed the arrested person is subjected to custody U/s.167 (2) Cr.P.C, and that the custody can be Judicial custody or when the police has requested for custody in order to investigate, it can be a police custody. It cannot be used for inflicting pain and suffering upon a detained person and treating in boisterous and repugnant manner which is inhumane and endangers the very existence of a detenu when it is perpetrated.

The Law Commission of India has emphasized the aspect of custody in its 113<sup>th</sup> report on Injuries in Police custody (1985), the 152<sup>nd</sup> report on 'custodial crimes' (1995), the 185<sup>th</sup> report on the 'Review of the Indian Evidence Act' 2003 and the 273<sup>rd</sup> report on 'The implementation of the UN convention against torture' (2017). The Hon'ble Supreme Court in **RAGHBIR SINGH Vs. STATE OF HARYANA**<sup>5</sup>, has acknowledged custodial deaths and torture to be diabolic, and has observed that, the lives and liberty of common citizens are under a new peril when the guardians of the law gore human rights to death. Further, the Hon'ble Apex Court in State of **MADHYA PRADESH Vs. SHYAM SUNDAT TRIVEDI**<sup>6</sup> (1995) 4 SCC 262, has observed that, in a Police custodial death, the calmness of Police officials who are cited as witnesses, feign ignorance about the whole matter.

In **K.H.SHENARAPPA Vs. STATE OF KARNATAKA**<sup>7</sup> at the Juncture of reprimanding

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<sup>5</sup> (1980) 3 SCC 70.

<sup>6</sup> (1995) 4 SCC 262.

<sup>7</sup> (2009) 17 SCC 1.

custodial deaths the Hon'ble supreme Court has observed that, death in police custody which are on the rise, are the most heinous crimes committed by person who claim to be the protectors of the citizens and that, incidents of torture and death take place under the shield of uniform and authority, in the four walls of a Police Station or in the lock-up, where the victims are totally helpless. The term custody has been enunciated by the Hon'ble Supreme Court in **NIRANJAN SINGH Vs. PRABHAKAR RAJARAM KHAROTE, AIR 1980 SC 785**, wherein it has been observed by Justice Krishna Iyer that, a person is in custody, within the meaning of section 439 of the code, when he is in duress either because he is held by the Investigating agency or other Police or any other authority or is under the control of the court, having been remanded by Judicial order or having offered himself to the court's Jurisdiction and submitted to its order by physical presence. The Ministry of Home Affairs had issued certain guidelines on 04.07.1985, with regard to the code of conduct for the police in India. In the said Code, the first guideline states that, the police must bear faithful allegiance to the constitution of India and respect and uphold the rights of citizens as guaranteed by it. In order to imbibe this concept of ensuring that the fundamental rights of the citizens are not violated much remains to be done on the side of law enforcement institution.

To reckon a few precedents, the Hon'ble Madras High Court in **AKILANDESWARI Vs. STATE, REPRESENTED BY SECRETARY TO GOVERNMENT, HOME, PROHIBITION AND EXCISE DEPARTMENT, CHENNAI -600 009**<sup>8</sup> has held that, right of intimation to the relatives or family members of the detenu encompasses the fundamental right guaranteed under Article 22 (5) of the constitution, to make a representation to the Detaining Authority or the State Government, as the case may be. The Hon'ble High Court of Madras has gone on to hold that, non – intimation of arrest will amount to deprivation of the right to make an effective representation guaranteed under the constitution. It will be pertinent to mention here another precedent, of the Hon'ble High Court of Madras, in **GANESH @ LINGESAN Vs. STATE OF TAMIL NADU AND ANOTHER**<sup>9</sup>. In the said Judgment it has been enunciated that, non- intimation of arrest to dear and near ones who could make representation as against the detention order on behalf of the detenu, will amount to prejudice of the right guaranteed to the detenu under Article 22 (5) of the constitution. Adding emphasis to the guidelines of arrest intimation, the Hon'ble Madras High Court, in a Division Bench Judgment, in **RABIYA Vs. THE SECRETARY TO GOVERNMENT**<sup>10</sup> and in **HARINI Vs.**

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<sup>8</sup> 2008 (3) MLJ (Cri) 744

<sup>9</sup> 2012 (3) MWN (Cr) 315 D13

<sup>10</sup> 2021 (1) LW (Cri) 174

**THE STATE AND 3 OTHERS**<sup>11</sup> has held that, the communication of arrest through SMS is not in compliance with the procedure laid down, and that, what has been impressed upon and often reiterated is the underlying significance of the gravity to inform the kith and kin of an arrested person.

The ideology of liberty in the preamble of constitution and the pinnacle of personal liberty envisaged in Article 21 are interwoven and encompasses the concept of liberty, not only when a person could move around freely exercising the fundamental rights but even when there is an implication and consequent confinement, restriction of other rights which a person who is not detained could exercise. Infusing the rapid growth of technology into the realm of arrest and detention is appreciable but what upsets the apple cart is the gross violation of certain rudimentary and primary rules and procedure. With the burgeoning growth of technology, the procedure of arrest, remand and the other proceedings are recorded in an online portal and updated forthwith. But that cannot be a replacement to comply with certain basic procedure such as intimation of arrest, subjecting the arrested person to medical examination in order to ascertain the physical fitness to be remanded. In any event, communication of arrest through SMS, voice call or voice message or by any other means which has not been made as a part of the procedure cannot countenanced when there is no place for such a so called procedure in law, and that, availability of the technology at disposal should not be considered as leverage to sabotage the fundamental procedure, by flouting the vital compliances, such as proper intimation of arrest. In order to curtail the flagrant breach of procedure being committed with regard to arrest intimation, technology cannot be pressed into service as an alternative for an effective communication of arrest.

At this Juncture, an imperative question that arises is that, what could be done or in other words what should be done, if an arrested person hails from another state and has got no nearest kith or kin physically available in proximity, so as to intimate about the arrest. In that event, the Police Officer can ring up the number, which the detenu informs and the arrest can be communicated in the presence of the detenu and 2 other witnesses and this entire procedure can be done while the arrested person is produced before a Judicial Magistrate and a special Report can be submitted by the Police Officer. In addition this, through postal service the intimation of arrest can be made. Ensuring checks and balances are indispensable, especially when it comes to depriving of liberty and causing detention. Doing away and dispensing with manual records attributing it to the likes of uploading Crime and Criminal Tracking Network and System

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<sup>11</sup> H.C.P. NO.2679 OF 2022

(C.C.T.N.S) system which is a repository and archive of data is on the one hand, and on the other hand, a poised and well balanced procedural enforcement without any peril to human life is crucial as mandated by the Hon'ble Supreme Court. Every human deserves to be treated equally and with dignity, which shall not be thrown to the winds in any instance and when it comes to detention and custody there ought to be assiduous and diligent care taken to ensure that the precious and cherished right is preserved.

It will be pertinent to mention here the emphasis laid down by the Hon'ble Supreme Court by accentuating upon the importance of personal liberty while an individual is taken in police custody in *D.K.Basu's* case

...Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society.

In spite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third-degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation.....

Custodial death is perhaps one of the worst crimes in a civilized society governed by the rule of law. The rights inherent in Articles 21 and 22(1) of the Constitution require to be jealously and scrupulously protected. We cannot wish away the problem. Any form of torture or cruel, inhuman or degrading treatment would fall within the inhibition of Article 21 of the Constitution, whether it occurs during investigation, interrogation or otherwise. If the functionaries of the Government become law-breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilized nation can permit that to happen. Does a citizen shed off his

fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal cord of human rights' jurisprudence. The answer, indeed, has to be an emphatic 'No'..."

On reckoning the significance of rights in police custody the Hon'ble Supreme Court in **MEHBOOB BATCHA & ORS. Vs. STATE REP. BY SUPERINTENDENT OF POLICE**, has observed that the perpetrators of the crime who were policemen ought to have been indicted and charged under Section 302 IPC, and that, death sentence should have been handed down for the egregious and flagrant violation of human rights in police custody. The relevant observation of the Hon'ble Supreme Court is extracted hereunder.

“15. We are surprised that the accused were not charged under Section 302 IPC and instead the Courts below treated the death of Nandagopal as suicide. In fact they should have been charged under that provision and awarded death sentence, as murder by policemen in police custody is in our opinion in the category of rarest of rare cases deserving death sentence, but surprisingly no charge under Section 302 IPC was framed against any of the accused. We are constrained to say that both the trial Court and High Court have failed in their duty in this connection.

16. The entire incident took place within the premises of Annamalai Nagar police station and the accused deserve no mercy.”

No human being shall be deprived of his or her personal liberty except according to the procedure established by law is the sine-qua-non and an indispensable procedure that has to be complied with invariably and unequivocally. The personnel in uniformed services who detain an individual need to be educated about the importance of human rights while detaining an individual and ensure to provide the arrested person with basic human rights which every human being deserves. It is high time to refrain from shedding the nonchalant and lackadaisical approach observed at the time of effecting an arrest and evolve into a refined and well oiled system which is congenial for the betterment of society at large.

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