

RAJYA SABHA

Wednesday, the 29th July, 1998/7th
Shravana, 1920 (Saka)

The House met at Eleven of the clock. Mr.
Chairman in the chair.

ORAL ANSWERS TO QUESTIONS

MR. CHAIRMAN: Question No. 601.

Hon. Member Absent. [The questioner
Shri O.P. Kohli) was absent for answer
vide col infra.]

Torture in Police Custody

*602. SHRI RAMDAS AGARWAL: Will
the Minister of HOME AFFAIRS be pleased
to state:

(a) whether Government's attention has
been drawn to a news-item published in the
Hindustan Times, dated 9th July, 1998,
captioned "Torture in Police Custody
continues—law panel proposals await
Government nod"; if so, the details thereof;

(b) what punitive provisions have been
suggested by the Law Commission for
incorporation in the Indian Penal Code (IPC)
and the Code of Criminal Procedure to
prosecute the police official who has no right
to torture the accused in custody except to
arrest/interrogate him; and

(c) by when Government propose to
approve the said proposal in order to check
this rising trend of human rights violation?

THE MINISTER OF HOME AFFAIRS
(SHRI L.K. ADVANI): (a) to (c) A Statement
is laid on the Table of the House.

Statement

(a) Yes, Sir. According to the news item,
punitive measures in the Indian Penal Code
and the Code of Criminal Procedure are not
adequate to prosecute a police official
responsible for custodial crime. The news
item further states that the Law Commission
had recommended the incorporation of
section 114B in the

Indian Evidence Act. The Law Commission,
it has been stated, was of the view that the
change was necessary to facilitate the courts
to prosecute police officials responsible for
the torture of any person in custody. The news
item also states that the Law Commission had
recommended that section 197 of the Code of
Criminal Procedure be amended to obviate
the necessary sanction to prosecute a police
officer, if a prima facie case was made out
against him.

(b) and (c) At the request of the
Government, the Law Commission of India
has made a comprehensive review of the Code
of Criminal Procedure, 1973. In its Report
(154th) submitted to the Government in this
regard, there is no such recommendation for
the amendment of section 197 of the Code of
Criminal Procedure, 1973 as stated in the
news item. However, in its 113th Report on
the Indian Evidence Act, 1872, the Law
Commission of India had suggested insertion
of section 114B in the said Act to shift the
burden of proof on the police officer in case
of injury caused to a person in police custody.
The amendments suggested by the Law
Commission of India are receiving attention.

श्री रामदास अग्रवाल : सभापति महोदय, मेरे प्रश्न
का उत्तर माननीय गृह मंत्री जी ने दिया है। उसके संबंध
में मैं एक विषय पर उनका ध्यान आकर्षित करना
चाहूँगा। अपने प्रश्न के [सी] भाग में मैंने पूछा था कि:

By when does the Government propose to
approve the said proposal to check the rising
trend of human-rights violations? सभापति महोदय
केवल इतना मिला है कि: The amendments
suggested by the Law Commission of India are
receiving attention. महोदय, यह मामला बहुत वर्षों
से, लगभग एक साल, छह महीने से सरकार के
विचाराधीन है। अपराधियों के लिए जो बंदीगृह थानों में
या अन्य जगहों पर होते हैं। वे मौत के घर बन जाए यह
वास्तव में किसी भी सरकार के लिए अत्यन्त कलंक की
बात है और विशेषरूप से पुलिस के लिए निश्चित रूप
से यह शर्म की बात है। कि कोई व्यक्ति क्रस्टी में, या
इन्वेस्टीगेशन के टाइम पर या किसी इन्ट्रोगेशन के
टाइम पर मर जाए,

उसकी मौत हो जाए। इसलिए महोदय, मैं यह प्रश्न पूछना चाहता हूँ कि सुप्रीम कोर्ट ने डा0 डी0 के बासु द्वारा दायर जन-हित याचिका, जिसका फैसला सुप्रीम कोर्ट के न्यायमूर्ति कुलदीप सिंह जी और न्यायामूर्ति जे0 एस0 आनन्द ने किया, उन्होंने अपना आबजर्वेशन करते हुए कहा था कि: Custodial death is perhaps one of the worst crimes in a civilised society governed by the rule of law. इस जजमेंट के बाद कई सरकारें आई और चली गयीं। लेकिन इस पर कोई कार्यवाही नहीं हुई। मेरे प्रश्न का पहला भाग यह है कि सरकार को कार्यवाही करने के लिए क्या इतने समय की आवश्यकता होती है जब कि इतने जीनियस क्राइम्स हो रहे हैं और इस जजमेंट के बाद भी इस प्रकार के क्राइम्स में बढ़ोत्तरी हुई है। तो इस संदर्भ में क्या सरकार इतना समय लेगी और मौतें होती रहेगी? यह मेरे प्रश्न का पहला भाग है। दूसरा निवेदन मेरा यह है कि सुप्रीम कोर्ट ने जब यह जजमेंट दिया था तो उस समय कुछ गाइडलाइंस दी थी। आठ गाइड लाइंस उन्होंने स्पष्ट रूप से अपने जजमेंट में दी थीं। मैं उनका ब्यौरा आपके सामने समयाभाव के कारण नहीं रखूंगा। सरकार के पास यह ब्यौरा है। मैं निवेदन करना चाहूंगा कि क्या उन आठ गाइडलाइंस के आधार पर कोई कार्यवाही सरकार ने की है या सरकार उसके बारे में जानकारी रखते हुए क्या कदम उठाना चाहती है, यह हम स्पष्ट रूप से जानना चाहते हैं? महोदय, आगे एक जजमेंट में कहा गया है कि: The court has observed further and warned that the..... कोर्ट ने वार्निंग भी दी थी कि अगर इस प्रकार की गाइडलाइंस को मान्यता नहीं दी गयी या उन पर कार्यवाही नहीं की गई तो उन आफिसरों के खिलाफ कार्यवाही की जाएगी। उन पर कंटेन्ट आफ कोर्ट लागू हो सकता है। तो मैं सरकार से पूछना चाहता हूँ कि क्या पिछले डेढ़ साल से उन लोगों के खिलाफ इस आर्डर के तहत कार्यवाही की है?

श्री लाला कृष्ण आडवाणी: सभापति जी, सम्माननीय सदस्य ने जो प्रश्न पूछा है, उसकी पृष्ठभूमि यह है कि यह मामला डेढ़ साल से लटका रहा है। कितना समय और लगेगा, जब कि वस्तुस्थिति इससे ज्यादा दुखदायक है। वह इस कारण से कि जिस लॉ कमीशन की रिपोर्ट के आधार पर यह सारा प्रश्न और यह समाचार आधारित है, वह लॉ कमीशन की रिपोर्ट 1986 की है। 1986 में लॉ कमीशन ने अपनी 113वीं रिपोर्ट दी थी जिसमें उन्होंने कहा था कि जब कोई व्यक्ति हिरासत में हो और उसकी मृत्यु हो जाए तो

ओनस आफ प्रूड एक्यूज्ड पर होना चाहिये, पुलिस अधिकारी पर होना चाहिए। इसलिए उन्होंने एवीडेंस एक्ट में संशोधन करने का सुझाव दिया। उसके बाद लम्बी चर्चा चली है, केन्द्रीय सरकार में भी चली है, विभिन्न प्रदेशों की सरकारों से भी चली है। यहां तक कि 1992 में this matter was discussed in the Conference of Chief Ministers, the Director-General of Police and Home Secretaries. Most of the Chief Ministers were opposed to the proposal for shifting the onus of proof on the police officers. The Director General of Police and Home Secretaries also did not favour as it may demoralise the police force. व्यक्तिगत रूप से मैं कहूँ तो मैं इतना समझता हूँ कि कस्टोडियल क्राइम्स को बाकी क्राइम्स से सेपरेट करना चाहिये। इस सदन में मैं सदस्य था, उस समय कस्टोडियल रेप के बारे में एक संयुक्त प्रवर समिति बनी थी जिसका मैं सदस्य था और उसी समिति ने सिफारिश की कि साधारण रेप का दंड भले ही 10 साल हो लेकिन कस्टोडियल रेप हो जाए तो इसके लिए आजन्म कारावास की भी व्यवस्था होनी चाहिए। तब से ले कर कर दी। इसीलिए मैं मानता हूँ जो लॉ कमीशन की सिफारिश है, उसमें बहुत वजन है लेकिन यह मामला अप्रैल, 1996 में भी गवर्नमेंट के सामने प्रस्तुत किया गया और गवर्नमेंट ने उस पर कोई निर्णय नहीं लिया और मामला हमारे पास आ गया है। इसलिए मैंने आपको कहा कि यह मामला इस सरकार के विचाराधीन है। मूलतः मैं इस धारणा से सहमत हूँ custodial crimes are of a different category than ordinary crimes. If the onus of that crime is shifted on to the offender, it is basically rational and right. इतना मैं कह सकता हूँ।

श्री रामदास अग्रवाल : मैं गृह मंत्री जी का आभार व्यक्त करता हूँ उन्होंने हम सब की इस भावना से सहमति व्यक्त की और वे आगे कार्यवाही करेंगे। मेरा दूसरा प्रश्न यह है कि इसी जजमेंट में यह भी कहा गया था कि रि-ओरियेंटेशन कोर्सेज होने चाहिये, ट्रेनिंग होनी चाहिये अफसरों की ताकि उनकी जो पूर्व की परम्परा पर आधारित व्यवस्था है, तौर-तरीके हैं, उनमें सुधार हो सके, बेसिकली उनकी मानसिकता में भी बदलाव आए। इस दृष्टि से उन्होंने सुझाव दिया था। क्या माननीय मंत्री जी बताने का कष्ट करेंगे कि क्या इस संबंध में कोई एक्शन लिया गया है?

श्री लाल कृष्ण आडवाणी : सभापति महोदय, एक प्रकार से यह उस जजमेंट का और वह भी महत्वपूर्ण जजमेंट आफ सुप्रीम कोर्ट बसु वर्सीज़ वेस्ट बंगाल गवर्नमेंट का भाग हैं। उसमें इस प्रकार की जितनी सिफारिशें हैं, उनसे यह सरकार सहमत हैं।

SHRI RANGANATH MISRA: Mr. Gaiirman, Sir, we have been suggesting that Government should separate the investigation wing from the police force in charge of Law & Order. That was the recommendations of the Police Commission. If that is done, a separate investigation wing can be put in charge of investigation in every State, then, the entire colour will change. Investigation is a specialised subject. It should be headed by professionalised people and they only should be incharge of the investigation. This is being suggested for the last two decades or so, but nothing has been done. The Government of India is putting the responsibility on the State Governments saying that it is a State subject and they must take the lead.

Now that the Hon'ble Home Minister has agreed death in Police Custody is a separate type of offence and for this offence more rigorous punishment should be given and the burden of proof should be shifted. Something positive should be done. There is no point in saying, "We realise, we understand and it should be done." I would like to say, that action is warranted. The Government of India must take the lead and work it out.

SHRI L.K. ADVANI: Sir, a slightly different issue has been raised by the hon. Member. I can only say that the criminal law being a concurrent subject, that we are under an obligation to consult the States to take the initiative in this matter is quite right and the Government would like to take the initiative both in this regard, that is, custodial crimes, and in regard to what has just now been suggested about separating the investigating wing from the prosecuting wing.

SHRI KULDIP NAYYAR: Mr. Minister, do you know that the National Human Rights Commission has said in its

last report that custodial deaths have doubled in the last one year? That means that whatever steps have been taken have been of no consequence. Could the hon. Minister also kindly tell me which State has the maximum number of custodial deaths?

SHRI L.K. ADVANI: Sir, I would need notice for that.

MR. CHAIRMAN: That is all right. Mr. Gurudas Das Gupta.

SHRI GURUDAS DAS GUPTA: Sir, this question has another aspect also. The police authority and the police administration which are required to collect evidence in support of their prosecution, take to third degree methods to extract a confession. Since the collection of evidence is a laborious process, the police takes to the easiest course of committing atrocities while the man is in custody, by taking recourse to third degree methods. These methods were introduced in the country when the nation was fighting for freedom during the British rule. Will the hon. Home Minister consider the question of banning third degree methods for extracting information and evidence and a confession from those who are in custody by the police?

SHRI L.K. ADVANI: Sir, insofar as law is concerned, third degree methods are not permitted.

SHRI GURUDAS DAS GUPTA: Nor are they banned.

SHRI L.K. ADVANI: There is no question of banning them because a third degree method is an offence. They are already banned under the law.

श्री संघ प्रिय गौतम : मिठाई खिलाकर पूछ लिया करें। बता दिया करेंगे। ... (व्यवधान)

SHRI GURUDAS DAS GUPTA: Sir this is unfortunate, extremely unfortunate. Holding a brief for the criminality of the police is unfortunate.

SHRI L.K. ADVANI: The criminality of the police is wrong. So also, the brutality of the criminals is wrong. Both are wrong. In fact, the Law Commission

has recommended steps towards ensuring that third degree tortures do not take place and for that purpose, they have said that the onus is on the person who is in charge to prove. Suppose a person is arrested for any crime, say, theft or dacoity, and the next morning, in that 'havalat', the criminal is found dead. The onus should be on the person who is in charge there. That is the recommendation which, unfortunately, has not been accepted till now, even though the Central Government has moved in that direction. It will surprise Mr. Gurudas to know that in 1993, the Central Government wrote to the State Governments for their views again. Most State Government did not respond. Some of the State Governments like West Bengal and Karnataka strongly opposed the move. I did not want to identify any States. But, by the large, there is a feeling among many of those in charge of law and order that unless these methods are adopted, we will not be able to know the truth about the crime and criminals cannot be booked. I do not agree insofar as custodial murder is concerned, custodial crimes are concerned, I would like to place them on a different category. Therefore, broadly speaking, my first inclination for the Law Commission's recommendation is that the proposal is right.

SHRI S.S. SURJEWALA: Sir, while deciding to make laws for custodial deaths, the Home Minister has stated that he desires to include a separate provision or a separate chapter in the IPC or in the Cr. PC. I would like to know whether the Government will also include the death of a debtor in the custody of a bank staff under such law. That is also a custodial death. He may not be in the custody of police, but he may be in the custody of a bank staff. This is not a small matter. Sir, I would like to apprise you that a large number of people are found either dead or tortured while in custody. An incident has occurred recently in Jind District of Haryana where a farmer, who was a debtor, was

found dead in the custody of a bank staff.

Sir, I would like to apprise the House that there is a law under which a farmer who is a defaulter can be put in a civil prison by a cooperative bank for 40 days without having taken in remand or without having produced before any officer. That is number one. Number two, all the dietary expenses for 40 days will be included in his debt. This is a black law. Sir. It may be a different question. Will the Government consider including such deaths in the custodial deaths?

SHRI L.K. ADVANI: Sir, I agree that in a sense this is also a custodial death. I am told by my colleague that in respect of this particular problem, the finance Minister also has applied his mind and said something in the House.

SHRI ASHOK MITRA: Sir, I would like to revert to the whole issue of applying third degree methods. Sir, the onus, in part, should also lie with the Government. If you look at the incidence of custodial deaths, this incidence has gone up merely because a certain latitude has been shown by Government to the police officers in the matter of applying third degree methods. Whether we are a civilised country or whether we are not a civilised country, I see no reason why the Home Minister cannot convene a meeting of all the State Governments and reach a judgment on whether third degree methods should be on or off, and it is a question of going by certain conventions. If the convention develops that police officials will be punished if they apply third degree methods, then obviously the culture will change, and I don't believe that with such a switch of culture there will be any proliferation of crimes. On the other hand, I think that in this different environment it should be possible for the police to be more effective.

SHRI L.K. ADVANI: Mr. Chairman, Sir, I wish we could move in this direction very firmly. As it is, the question was limited to custodial death which is a heinous crime, which is not an ordinary crime like beating someone and trying to

make him admit that he has committed an offence. Today I find that the situation in the country is such that Chief Ministers and Directors General of Police are not willing even to make that small change in the Evidence Law that the onus should be on that police officer, as to how that person died in custody. Therefore it is that I would not like to make commitments to the House, which, I know, perhaps may not be implemented. In this respect I would like to see that this recommendation is implemented just as we decided about a custodial rape. We decided, and yesterday, in the other House, I said, "So far as rape is concerned, this Government would like to provide capital punishment for rape." In that regard also I propose to convene a meeting of all the Chief Ministers and all the DGs of Police where, among the various issues which I have in mind, this would be one of the issues, namely, custodial crime.

प्रो० रामगोपाल यादव : थैक्यू सर। न्याय शास्त्र का यह मान्य सिद्धांत है कि जो आरोप लगाए। वह आरोप सिद्ध करे। सर, डाउरी डेथ्य वाले मामले में जब सी०आर०पी०सी० में एमेंडमेंट हुआ और यह व्यवस्था की गयी कि ओनस, जिस के ऊपर आरोप हैं, वह सिद्ध करे कि निर्दोष हैं। यह सही है कि वह आरोप ही नम क्राइम हैं, लेकिन यह भी सच है कि उस अमेंडमेंट के बाद हिंदुस्तान में लाखों निर्दोष लोगों को भी जेल जाना पड़ रहा है एक व्यक्ति जिम्मेदार होता है और परिवार के सारे लोगों से लेकर रिश्तेदारों तक को, अगर नाम लिखा दिया जाता है तो नाम लिखने के बाद एफ०आई०आर० करन वाले की ज्यूटी खत्म, जेल जाना ही पड़ेगा, निर्दोष लोगो से पूछना चाहूंगा कि कस्टोडियल डेथ्य के लिए तो ठीक हैं कि इंडियन एवीडेंस एक्ट और सी०आर०पी०सी० में संशोधन किया जाए, लेकिन अन्य इज्योरीज के संबंध में अगर इस तरह के संशोधन का विचार उन के दिमाग में हैं तो क्या माननीय गृह मंत्री जी इस तरह का अमेंडमेंट जोकि डाउरी डेथ्य को लेकर हुआ हैं, उस के बारे में कोई सर्वे करवाएंगे क्योंकि मैं समझता हूं कि 80 परसेंट केसेज में कुछ-न-कुछ निर्दोष लोग अवश्य फंसाए गए हैं और उस अध्ययन के बाद ही कोई अगला कदम उठाने पर मंत्री जी विचार करेंगे?

श्री लाल कृष्ण आडवाणी : सभापति महोदय, मैं समझता हूं, कि यह कहना सही है कि हमारी विधि व्यवस्था में जब हम किसी पर आरोप लगाते हैं, सरकार किसी पर आरोप लगाती है तो सरकार का दायित्व, प्रोसीक्यूशन का दायित्व है कि उस को प्रमाणित करे। कुछ हजार अपराधों में से कुछ अपवाद के रूप में संसद ने निकाले हैं और उन में [ओनस ऑफ प्रुफ] एक्यूल्ड पर ही डाल दिया है और जैसे कस्टोडियल रेप हैं, वेसे डाउरी डेथ को भी लगाया गया हैं, यह मैं मानता हूं। लेकिन यह निर्णय संसद ककी एक संयुक्त प्रवर समिति ने किया है जअ उन्होंने देखा कि महिलाओं के विरुद्ध दहेज के नाम पर जिस प्रकासर से लगातार अत्याचार हो रहा है तो उसे रोकने के लिए इस प्रकार का रेडिकल कदम उठाना जरूरी हो गया। सभापति महोदय, यह तो संसद का निर्णय है और मुझे नही लगता कि उस में कोई परिवर्तन करने की जरूरत है, लेकिन आज मिश्र को पूछा गया है, उस में मुझे लगता है कि कस्टोडियल डेथ जरूर ऐसा है कि जहां पर ओनस शिफ्ट हो, तो यह उचित होगा, न्यायोचित होगा।

SHRI O. S. MANIAN: Sir, I would like to know from the hon. Home Minister whether custodial deaths in India are nowadays increasing. For example, one Chinnayan, an Adi Dravidar, was arrested because of a group clash with regard to the allotment of group houses at Valangaiman in Tiruvarur district of Tamil Nadu. He died in police custody. After his death the Tehsildar of Valangaiman with the help of the police tried to perform the last rites of the deceased. I and my friends stopped the action of the Tehsildar. I want to know under whose orders the Tehsildar tried to cremate the body of the deceased.

SHRI L. K. ADVANI: Sir, he is referring to a specific incident.

Incidentally with your permission. Sir, I would like to reply to Mr. Kuldip Nayyar's question. Mr. Kuldip Nayyar had put to me a question to which I replied, "I don't have the information right now." I find that in the last year from April, 1997 to March, 1998 there were 21 custodial deaths in Andhra Pradesh, 19 custodial deaths in

Maharashtra, 18 custodial deaths in Madhya Pradesh, 16 custodial deaths in Uttar Pradesh and 14 custodial deaths in Assam. These are the figures.

-SHRI KAPIL SIBAL: Sir, I don't think that any right thinking person or any Government would ever say that custodial death is acceptable. But we have to go to the genesis of the problem. The genesis relates—I have some experience in this area of law—to the time when the Police takes into custody any particular individual. Custodial death unlike murder is normally not preplanned. It is not like an ordinary murder. It is a slow process. When the Police takes into custody a particular accused, they don't enter it in the register. That is the normal practice which the Police follows. That is the normal practice throughout India. They never enter in the register when a particular man is taken into custody. As you know, Sir, under the Constitution the Police is entitled to keep a man in custody for 24 hours without producing him before a Magistrate. If they do not enter in the register as to when he was taken into custody, they can keep him as long as they like. It is only when they enter it in the register, then within 24 hours he has to be produced before a Magistrate. In the process he can be terrorised and he can be maltreated. That is a slow process. When accused persons are taken to court they can file an application before a Magistrate and say, "Conduct a medical examination of my person", and the Magistrate allows it. But such a facility has neither been provided by the Government nor under any rule is an accused or a prospective accused entitled to medical examination in the course of his custody. My question is: Could you please look into this matter and deliberate as to how you can provide a doctor visiting places of custody on a daily basis, not under the control of the Police. The doctor can find out from the accused if at all he has been maltreated? That is the best way of dealing with this problem. That is question number one.

My second question is..... (Interruptions). I have to learn the tricks of the trade, okay, part (b) of my question is this. The hon. Member has rightly mentioned that the investigation must be separated from normal Police functioning. This has been done in China. It has proved extremely successful. The other problem which the hon. Member raised is, the culture of the Police. That has to be changed. That is the real problem. If they don't understand that accused also have human rights, there will be custodial deaths. The problem is social, professional and legal. The Government has to take an overall view and see what steps it can take to deal with the matter.

SHRI L. K. ADVANI: Sir, so far as part (b) of his question is concerned, I entirely agree with the hon. Member that this is not just a problem of law, it is more a problem of attitude and mentality and approach to issues such as human rights. We have to tackle the crime. But, at the same time, we have to respect the human rights. These two things have to be ingrained in the law and order machinery as a whole. We have been consciously trying to do that. When you create an institution like the National Human Rights Commission in the country, you are in a way having the whole country move towards that and the Government also moves towards that.

So far as part (a) of his question is concerned, I would say that it is not a question. It is a suggestion for action which this Government will keep in mind.

MR. CHAIRMAN: Question No. 603.

भूमि अर्जन कानून में संशोधन

603. श्री राजनाथ सिंह सूर्य : क्या ग्रामीण क्षेत्र और रोजगार मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या ग्रामीण विकास के लिए भूमि अर्जन कानून में संशोधन किये जाने को कोई प्रस्ताव है,

(ख) यदि हाँ, तो उसके क्या कारण हैं,