The importance of being humane

Posted at: 20/02/2019

Opposition parties must make a new anti-torture legislation part of their common programme

- Custodial torture is global, old and stubborn. The Arthashastra prescribes mental torture through swear-words with or without physical assaults.
- Death by a thousand cuts was ancient China's speciality. The Tang Code (652 CE) describes judicial torture in detail.
- Ancient Japanese methods of torture numb the human imagination.
- Their modern avatar in Japan's World War II of biological and chemical experimentation on humans — prisoners, mainly Chinese — in Unit 731 stop the blood-flow to one's heart.

Cautioned by history

- It certainly shows that the inflicting of pain is an inseparable part of human history. More specifically, the history of power, of authority and control.
- The practice of custodial power is about men — and sometimes, women — who are in positions of power, even if for a brief while and over a limited terrain, having custody over a powerless person.
- It is about the use of custodial opportunity to torture the captive's body and mind.
- And there, in that arena of wantonness, it becomes something of a sport for the human "Gods" that rule mere humans.
- Custodial death, when not 'natural', is the extreme end-point of custodial torture.
- The death penalty, notwithstanding 'due process', is a close kin to this lawless and heartless game.
- The butchering last October of Saudi journalist Jamal Khashoggi tells us custodial torture and killing are no country's, creed's or culture's monopoly.
- Torture seems to be, like the roach, co-terminus with Time; And co-

extensive with homo sapiens.

- India has practised and continues to practise the 'third degree' with impunity. But if torture is real, human revulsion with torture is also real.
- Meeting on December 10, 1984, the UN General Assembly stirred the world's conscience.
- UN adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Better known as the UN Convention against Torture, it sought to prevent torture around the world.
- In other words, it foresaw every possible subterfuge and subversion by states.

The Indian case

- India took 13 years to sign the Convention, but sign it did, on October 14, 1997, during the 11-month-old Prime Ministership of I.K. Gujral.
- But signing is only the first step.
- Unless a convention is ratified and followed or preceded by domestic legislation that commits the ratifying party to compliance, the original signing carries no meaning.
- India has not ratified. India's non-ratification of the Convention is both surprising and dismaying.

Constraints

- A state which signs the Convention has to have a domestic law on the subject to outlaw and prevent custodial torture.
- Without such a law, there is no meaning to signing the Convention.
- And so, late as it was, the UPA II government introduced a Prevention of Torture Bill in the Lok Sabha in 2010 and had it passed in 10 days.
- The bill as passed by the Lok Sabha was referred to a select committee of the Rajya Sabha.
- But that Bill was unlucky as it lapsed with the dissolution of the 15th Lok Sabha and was not revived by the 16th, the present Lok Sabha.
- Ratification of the Convention remains in limbo.
- Custodial torture remains in position. Why is the Indian state unwilling to say, 'no custodial torture in India'?
- The answer can only be that the power over a captive's body and mind is not easily given up.

Waiting for a nudge?

- Senior advocate Ashwani Kumar, former MP and Minister, moved a PIL in the Supreme Court in 2016 asking it to get Parliament to move forward in the matter.
- Whatever be the outcome of Mr. Kumar's PIL, it is imperative that the democratic opposition makes the ratification of the Convention and a new anti-torture legislation part of its common programme.
- The 17th Lok Sabha must take a stand on this matter. It has a choice: to join the civilised world in moving away from ancient barbarism or stay in the dungeons of blinding, benumbing brutality.