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An Engine of Oppression

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EQUAL JUSTICE

A

DISTANT DREAM INDEED!
"Who are your accomplices..." thundered the man in uniform.

"Saheb, I know nobody in Delhi... I am not a Badmash' I have come to inquire about my brother-in-law's treatment at AIIMS..."

"Which terrorist group do you belong to?"

"Saheb, I have three small children and a wife... old mother and father... saheb let me go..."

That third degree sometimes fails to extract a legally invalid confession was a surprise to me.

"We should let him go..." said the slim police officer. "Rubbish..." said the pot-bellied.

"Why don't you run away..." he suggested - almost commanding.

"Saheb why will I run away? Please let me go..."

"We will shoot you then..." said the other officer - the slim one - in an equally serious tone."

Then we will be rewarded with another flower on our strap..." said the pot-bellied with a grin, obviously referring to a promotion after a "successful encounter" of a "terrorist."

The bulb hanging under the green lampshade must have seen it all. And its counterpart must have witnessed Shafiq being booked under section 109 Cr.P.C. and the disappointment of the officers over the bad catch. Like most people in our society they could not accept their mistake—that they had failed to nab a terrorist in Shafiq. Instead they justified themselves by booking him under an apparently harmless section—of course, to the police's mind. Who cares if the Court has said the provision was potent enough to become an engine of oppression. I was "informed" about the "harmless" of this provision of law by some "experienced" Tihar inmates. They told me on my first visit—when I was a stranger to this provision" - Ye to 109 Mein Band Hai Sir. Turant Choot Jaiga. Ye mat leejiye. Doosre cases dekhiye." Later when I studied the provision I was amazed. This amount of callousness for a wrongful arrest. True, liberty is not yet a value. Or may be an acquittal from a specific charge is a more cherished one.

Section 109 Cr.P.C. - a preventive provision - provides for an arrest of a lurking stranger trying to conceal his identity with an intention to commit a cognizable offence. True, prevention is always better than cure. But prevention at what cost? Without even an iota of circumspection? This is more a question; now it is a fact of life. In Tihar Jail you find a large number of people suffering under it. While talking to Shafiq I was reminded of yet another case. A mason (incidentally of the same profession of Moti Ram of the famous S.C. bail case) was returning to his hometown from Shimla via Delhi. At Inter-State Bus Terminus (ISBT) he was drugged and looted. The biscuits he ate were really tasty he had told me. In an intoxicated state he took a redline bus for Punjabi Bagh enroute to Mangolpuri. He knew someone there. But being heavily drugged he fell down at the pavement when he got down at Punjabi Bagh. Probably unable to get up and find his way he might have been lying there for some time. And there! He was picked up by a constable and booked under this very section. I repent not having had the earnestness to trace those who booked him and just see what they had to say. His brother was a
contractor. We wrote to him and in five days the inmate was no more in Jail. The question that remained was - is this the use to which this provision should be put to? To victimize the victim? To assault the assaulted? By now you must be pondering whether all is lost. No. There is a silver lining when you consider the remarks of an "experienced" inmate - "shuker kijiye sahab NDPS' mein nahi band kiya, verna saaloyahin sartra. 109 toe kuch bhi nahi hai. Choot jayega."  

The interrogation of Shafiq (the police would like to call it conversation) I am sure must have been punctuated by body language - of the police - the third degree. I therefore believe Shafiq when in Tihar he tells me "I was beaten by a leather-rule on my back and sole... they hit me at my knees... they hung me upside down and poured water on my face... they threatened to kill me... this continued for three days... they almost killed me..." All this is narrated by a composed Shafiq. He continues in his characteristic accented Hindi..." Saheb, they beat me up, alright... I understand that people like me blast bombs in Dilli... But when they were satisfied I was not one of those why did they send me to jail?" Now, being "jailed" must have been a taboo for Shafiq lifelong. Finding himself in one must have been an unbearable trauma for him; for I see his eyes now flooding themselves with tears, replacing the anger and anguish they had just held" ... I have three small children back home ... My wife is very naive. How will she be able to look after all of them and my old mother and sick father... And then thefirings... they will die till I reach back... Please get me freed..." He must not have shivered so much even in the icy breeze of Srinagar. In front of me he broke down in a loud cry, his whole body shuddering like the wings of the fluttering flies which kiss the candles in the fall. Was it fear or just an outburst of emotions - the expression of uncontrollable self at the sight of a compassionate Saheb. Using an opportunity to unload himself of the emotional burden he had carried for days? May be. But much more than these, I feel, it was his trauma. The trauma of having been jailed. The trauma of expecting the death of his family every moment. The trauma of knowing that his patriotism was more than mere suspect. The anguish of realising that in this great nation above all he was a Kashmiri.

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1. An anti-social element.
2. This refers to killing suspected/dreaded terrorists by faking an encounter.
3. Karnataka High Court.
4. "He is booked under 109 sir. Will get released very soon. Don't take this. Accept other cases."
5. Jurisdiction or right to try and determine causes.
6. Both are localities in Western Delhi.
7. Narcotics Drugs and Psychotropic Substances (Prevention) Act. The infamous act is dreaded for its alleged misuse by the police. Bail is almost impossible to secure in the offences under this Act. At one time when we initiated the Tihar Project it appeared to us that an entire jail was full of NDPS under-trials; most booked for very small quantities of drugs. With setting up of Special Courts the backlog of NDPS cases seems to have decreased. However this apparent change in position may also be due to the change in lodging pattern of under-trials. They are now lodged in alphabetical order of their names against offence classification resorted to earlier. Partly it may also be that our occasion to meet NDPS undertrials are reduced due to our focus on other offences. Initially we used to call inmates generally and record their statements. Now we call inmates offence-wise. Nevertheless, the Special Court has been successful to quite an extent in this regard. But the act still remains notoriously misused.
8. "Thank God he was not booked under NDPS otherwise he would have rotten here for years. 109 (Cr.P.C.) is nothing. He will soon be out."