



CUSTODIAL VIOLENCE IN MODERN INDIA

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Abstract

Custodial violence, a term that encompasses torture, abuse, and death in police custody or other forms of detention, remains a grave concern in India's criminal justice system. The practice of custodial violence violates the fundamental principles of human rights and poses a significant challenge to the rule of law. Despite constitutional safeguards and international commitments, instances of custodial violence continue to plague the country. It infringes the natural rights of the person by subjecting them to torture which may be physical, psychological, mental and not only they are subjected to punishment rather their families also become the source of critic in society. India has witnessed numerous cases where individuals detained by law enforcement agencies have suffered physical and psychological torment while in custody. These acts of violence often occur due to the misuse of power, inadequate training of police personnel, corruption within the system, and an overall lack of accountability. Such incidents not only undermine public trust in law enforcement but also perpetuate a culture of impunity. Authorities which exercises power of custody are continuously misusing it this paper tends to depict the growing concern of modern society. There are some fundamental rights which are provided to every citizens of India despite of any religion, race, caste, sex, place of birth and it is right of the detenu too that he is provided with some safeguards. Powers which are given to some persons to maintain law, order and peace in the society are using it violate the law.

Keywords- Custody, violence, human rights, judgements, rule of law

Introduction

Custodial violence remains a grave issue in contemporary India. Instances of torture, custodial deaths, and sexual abuse by law enforcement officials continue to be reported across the country. The lack of effective oversight mechanisms and accountability for such acts exacerbates this problem further. These violations not only violate human rights but also undermine public trust in law enforcement agencies. It is not something new to the society, people are facing it since the colonial era as they used to dissent and control the population by employing oppressive practices like torture, abuse and extrajudicial

killing. Efforts have been made to address custodial violence through legal reforms and awareness campaigns. However, more comprehensive measures are required to eradicate this menace entirely and ensure that those responsible are held accountable for their actions.

ARTICLE 5 of the Universal Declaration of Human Rights, dated December 10, 1948 proclaims that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment"². Subsequently, the International Covenant on Civil and Political Rights, 1966 created a treaty-obligation under article 7 for

¹ Journal of the Indian Law Institute, October-December 2005, Vol. 47, No. 4 (October-December 2005), pp. 508-521

² Universal Declaration of Human Rights, 1948

the states parties to it that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."³

"Power tends to corrupt and absolute power tends to corrupts absolutely" this statement of Lord Acton came in reference to rule of law which tries to show the real nature of society that when power is accumulated in one hand then it is but natural to be misused. Our Constitution tries to establish to rule of law in the society which means law prevails; no one is above law.

When a person is beaten to death in police custody, the very event, even without the need of any propaganda, generates an image which retrospectively justifies it: the victim would not be beaten so badly if he/she were not a 'desperate' criminal or an otherwise dangerous individual. The police usually add their flourish to the image by describing as the victim's crimes all the charges they have written down in the FIR, some of them even perhaps as an afterthought necessitated by the very death.⁴ And when a scholar like Upendra Baxi ("The Crisis of the Indian Legal System") manages to arrive at the conclusion, unsupported by any evidence on exhibit, that custodial violence is used not invariably but rationally or 'judiciously' (a particularly inept choice of a description) by the police in the course of the investigation of crimes, the image acquires respectable solidity: it would not be a very judicious use of torture that beats to death a mere drunkard or pickpocket or prostitute, would it? It would not, obviously.⁵

Crimes in custody is growing concern in modern India which is often done by the person who is authorised to tackle to the crime.

³ Journal of the Indian Law Institute, July-September 1994, Vol. 36, No. 3 (July-September 1994), pp. 372-377

⁴ Economic and Political Weekly, Mar. 3-9, 2001, Vol. 36, No. 9 (Mar. 3-9, 2001), pp. 723-724

⁵ Economic and Political Weekly, Nov. 22, 1986, Vol. 21, No. 47 (Nov. 22, 1986), pp. 2028-2029

Meaning

Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also such intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself. Custody, torture, and violence embodies different meaning in itself which is described as follows-

Violence - The use of physical force, usually accompanied by fury, vehemence, or outrage; esp., physical force unlawfully exercised with the intent to harm. • Some courts have held that violence in labour disputes is not limited to physical contact or injury, but may include picketing conducted with misleading signs, false statements, erroneous publicity, and veiled threats by words and acts.⁶

violation is, generally, an act or omission contrary to law. From attack, an offense is an act or omission contrary to a criminal law

Torture usually denotes intense suffering, physical, mental and psychological, aimed at forcing someone to do or say something against his or her will. It means breaking down under severe physical pain and extreme psychological pressure. The suspect is detained in some isolated place beyond the reach of family, friends and legal assistance. Interrogators control everything, even life. For obvious reasons, torture is not called torture by those who practice it. It goes under the names of "sustained interrogation", "questioning" or "examining". Whatever the name, brutalisation is the result often.

The definition is broad in scope as it takes into consideration the physical as well as mental pain or suffering of the victim. But the definition explicitly excludes "pain or suffering arising... from... lawful sanctions⁷." This exclusion creates a serious loophole. Under the convention torture

⁶ Black's Law Dictionary (8th ed. 2004)

⁷ Edward A. Nolfi, Legal Terminology Explained

is allow prescribed by the law of the land. It means that the "lawful" torture may continue in the states which are parties to the convention. The definition for example accommodates many Islamic states having legislations which provide for certain brutal physical punishments, i.e., public whipping, execution by lynching or amputation of limbs. The definition obviously does not cover these so called lawful sanctions under the term "torture". It is uncalled for and this loophole should be plugged at the earliest.

The essential character of torture is that it is a crime of obedience. A crime that takes place, not in opposition to authorities, but under explicit instructions, or in a political environment in which such acts are implicitly sponsored, expected, or at least tolerated by the authorities. Furthermore, modern state torture and organised violence is characterised by being goal oriented. It serves a wider purpose than violence, punishment or confession as such. The complete definition has been framed by the General Assembly of the United Nations in its 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment' as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed/or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." The definition of torture given by the U.N. Convention has been practically seen in our country. Egregious violations of human rights, especially tortuous instincts of police personnel, have become the matter of daily routine. It is difficult to think of any police station in India where the police have not used

brutal and barbaric methods while treating the persons in their custody⁸.

Methods and Manifestation

It is pertinent to recognise the patterns of torture often used by the police in India. Here the observations of the report about the Torture of Political Prisoners in India submitted before the sub-committee on International Relations; U.S. House of Representatives in March 1976 is worth mentioning. The report pointed out the following kinds of physical torture:

- (a) Stamping on the bare body with heeled boots.
- (b) Beating with canes on the bare soles of feet.
- (c) Rolling a heavy stick on the shins, with a policeman sitting on it.
- (d) Making the victim crouch for hours in a 'Z' position.
- (e) Beating on the spine.
- (f) Beating with rifle butt.
- (g) Slapping with cupped hands on both ears until the victim bleeds and loses consciousness.
- (h) Inserting live electric wires into body crevices.
- (i) Forcibly laying nude on ice slabs.
- (j) Burning with lighted cigarettes and candle flame.
- (k) Denying food, water and sleep and then forcing the victim to drink his own excreta.⁹

According to a report by NCAT 2019, torment techniques utilized for custodial savagery in 2019 remembered pounding iron nails on the body, use of roller on legs and consuming, strategy for 'falanga' utilized where the bottoms of the feet are beaten, extending of legs

⁸ Gupta, Alok Kumar, and Geetanjali Sharma. "INDIAN POLICE: CRISIS OF CREDIBILITY." *The Indian Journal of Political Science* 73, no. 2 (2012): 299-310. <http://www.jstor.org/stable/41856592>.

⁹ Journal of the Indian Law Institute, JULY-DECEMBER 1999, Vol. 41, No. 3/4 (JULY-DECEMBER 1999), pp. 513-529

separated in inverse bearing, and hitting in confidential parts, wounding with the screwdriver, electric shock, pouring petroleum in confidential parts, applying stew powder in confidential parts, beating while at the same time being cuffed, pricking needle in the body. Different outrages and tormenting techniques utilized are beating with a hot iron pole, beating subsequent to stripping, peeing in the mouth, embedding a hard dull item into the rear-end, thrashing in the wake of draping potential gain with options and legs limited, compelling to perform oral sex, squeezing fingernails with forceps, the hardship of food and water, beating with iron bars after the casualty is suspended between two tables with two options and legs limited, constraining to do pressure position and kicking in the midsection of the pregnant ladies.

Forms and manifestations of custodial violence in India are varied and disturbing. Physical torture is one of the most prevalent forms, wherein detainees suffer beatings, whipping, or electric shocks. This physical abuse often leads to severe injuries or even death. Sexual assault is another alarming manifestation, with victims being subjected to rape or sexual harassment by custodial staff.¹⁰ Psychological torment is also rampant, as detainees endure mental trauma through intimidation, humiliation, and prolonged isolation¹¹. Denial of basic human rights such as access to food, water, medical care, or legal representation further exacerbates the suffering experienced by those in custody. In addition to these direct acts of violence, custodial violence can also take the form of extortion and corruption by law enforcement officials who exploit their position for personal gain. These various forms highlight the pervasive nature of custodial violence and its devastating impact on individuals and society as a whole¹².

¹⁰ Economic and Political Weekly, Vol. 51, No. 53 (DECEMBER 31, 2016), p. 8 Published by: Economic and Political Weekly

¹¹ The Legal State, Custodial Violence in India – The Brutal Truth
<https://lawsuperior.com/custodial-violence-in-india-the-brutal-truth/>

¹² AMEENA R, A SOCIO-LEGAL STUDY OF CUSTODIAL VIOLENCE WITH SPECIAL REFERENCE TO SCs/STs IN INDIA

Incidents and Judgements

Dealing with the role of the police, the apex court again in Delhi Judicial Service Association v. State of Gujarat¹³ condemned the arbitrary and excessive use of force by the police and observed that the main objectives of police is to apprehend offenders, to investigate crimes and to prosecute them before the courts and also to prevent commission of crime and above all to ensure law and order to protect citizens' life and property. Aberrations of police officers and police excesses in dealing with the law and order situation have been subject of adverse comments from this Court as well as from other courts but it has failed to have any corrective effect on it. The police has power to arrest a person even without obtaining a warrant of arrest from a court. The amplitude of this power casts an obligation on the police and it must bear in mind, as held by this Court that if a person is arrested for a crime, his constitutional and fundamental rights must not be violated.

An example of serious actions taken by the judiciary could be seen in Joginder Kumar v. State of U.P.¹⁴, where the Supreme Court held that no arrest could be made unless police officer is, apart from his power to arrest, able to justify it. Considering the arrest and detention is incalculable harm to the reputation and self esteem of an individual, it further held that except in heinous offences, an arrest must be avoided. Thus, unless condition so requires to enable police to prevent the offences as well as to investigate the crimes properly, no arrest can be made. With a view to minimizing the cases of illegal detention, the apex court expanded the meaning of articles 21 and 22 of the Constitution and formulated the following directives-

- i. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable

¹³ 1991 AIR 2176

¹⁴ Joginder Kumar v. State of U.P. and Others, 1994 Cr L.J.

- that he has been arrested and whereabouts of his detention.
- ii. The police officer shall inform the arrested person when he is brought to the police station of this right.
 - iii. An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from articles 21 and 22 (1) and enforced strictly.

In *Zahira Habibulla H. Sheikh v. State of Gujarat*¹⁵, Arijit Pasayat J has rightly observed: When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice delivery system of the country itself.

Conclusion

The practice of policing and human rights are closely interrelated. Policing is one of the means through which the state seeks to meet its obligation to protect some of the fundamental rights viz., right to life, liberty and security of persons. Effective enforcement of law and order will enable people to enjoy fully, not only their civil and political rights but also social and economic rights. But thoughtless and unlawful policing can suppress these rights. It is being increasingly felt that human rights are protected by the law on the one hand, and are often at risk from the law enforcers, on the other. In the name of law enforcement, custodial atrocities, which have now become a global phenomenon, cannot be accepted and tolerated in a democratic society governed by the 'rule of law'. National and international legal instruments have also created binding obligations to protect human rights and prevent all forms of atrocities.

Custodial violence in India is a distressing reality that cannot be attributed to a single cause, but

rather a combination of factors. Firstly, the lack of accountability and transparency within the law enforcement system plays a significant role. The absence of strict protocols and effective mechanisms to monitor the behavior of custodial personnel allows for instances of abuse to go unnoticed or unreported. Secondly, overcrowding and substandard conditions in prisons exacerbate the potential for violence. Overpopulation puts immense strain on already limited resources, leading to frustration among inmates and staff alike. This frustration often manifests as aggression or excessive use of force. Furthermore, pervasive societal attitudes towards crime and punishment contribute to custodial violence. A culture that normalizes brutality as an acceptable means of extracting confessions or maintaining discipline perpetuates an environment where such abuses are more likely to occur.¹⁶

The legal framework surrounding custodial violence in India is primarily governed by the Constitution and various legislations. The Constitution guarantees the right to life and personal liberty, which encompasses protection against custodial violence. Additionally, the Code of Criminal Procedure (CrPC) establishes guidelines for arrests, detention, and interrogation procedures to prevent abuse in custody.¹⁷ Despite these legal provisions, challenges persist in effectively addressing custodial violence. One major hurdle is the lack of awareness among law enforcement agencies and personnel about human rights standards and guidelines. The weak implementation of existing laws often leads to impunity for perpetrators of custodial violence. Furthermore, delays in trial proceedings contribute to a culture of impunity surrounding custodial violence cases. Inadequate witness protection measures also deter victims from coming forward or providing testimony against their abusers.

¹⁵ *Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors*, Appeal (crl) 446-449 of 2004

¹⁶ *Journal of the Indian Law Institute*, April-June 1994, Vol. 36, No. 2 (April-June 1994), pp. 166-192

¹⁷ *Economic and Political Weekly*, Nov. 22, 1986, Vol. 21, No. 47 (Nov. 22, 1986), pp. 2028-2029

Efforts towards prevention and addressing custodial violence in India have been made on various fronts to ensure the protection of human rights and the rule of law. Firstly, legal reforms have been introduced to strengthen accountability mechanisms within the criminal justice system. The Supreme Court of India has issued guidelines to prevent custodial violence, emphasizing the need for prompt medical examination of detainees and strict action against errant officials. Additionally, awareness campaigns have been launched to sensitize both law enforcement agencies and the general public about the consequences and illegality of custodial violence. Non-governmental organizations (NGOs) play a crucial role in documenting cases of custodial violence, providing legal aid, and advocating for victims' rights. Efforts are also being made to enhance police training programs with an emphasis on human rights education, empathy building, and de-escalation techniques.

Parliament must legislate laws to control the abuse of power and atrocities inflicted on society and Court must intervene in these matters inflicting sufficient punishments to the law breakers.

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