

Police Brutality and Custodial Torture in Technological Era: Need for Anti-Torture Law in India - A Critical Analysis

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Abstract

Police audacity and brutality is not an uncommon phenomenon. It has caught the attention of the public and the judiciary and eventually a catena of directions was promulgated by the National Human Rights Commissions (NHRC), High Courts as well as the Supreme Court of India right from the ancient era to technological era. Yet, the menace and inhumane attitude of the police officials have not declined; instead, it is increasing day by day and one step ahead, Tamil Nadu has seen the worst of its effect that has resulted in the death of an innocent father and his son. This incident has grabbed the attention of not only the State of Tamil Nadu but also the entire Nation. In this situation, the authors intend to analyse the power of the police to manhandle the public, the liabilities and responsibilities of the police in case of death caused by such brutality, and third-degree methods used by the police. This article ponders on the question Does the police have the power to torture the public for any reasons whatsoever? If so, what are the limitations placed on the powers of the police while harassing the public? and so on... the authors aspire to analyse the duties of the police while making the arrest, the duties of the magistrates while ordering for judicial custody, and the authors also intend to suggest the remedial measures to curb the menace of lockup deaths.

Aim and Scope: To know the powers of the police to torture the public under the guise of investigation, to know the judicial approach to curtail the menace of torture by the police, and its implications and to know the feasibilities of technologies to be implemented during the investigating process.

Method: For the purpose of the research, secondary data such as books, articles, news papers, case laws, and legal provisions of Indian Laws are collected and analysed.

Conclusion: In spite of the Constitutional and statutory provisions including International Conventions, decision and directions promulgated by the Apex Court of India and the NHRC, there is a constant increase in the custodial torture, custodial death and custodial ill-treatment which is a disturbing factor that causes deep anxiety in the society. The Prevention of Anti-Torture Act is the need of the hour.

Keywords: Judiciary, Legal Sanctity, Lockup Deaths, Police Brutality, Powers of Police, Rights of Public, Role of Technology.

Introduction

Technology has changed the entire world. Everything is possible and nothing is impossible in the

technological era. Number of technologies are adopted for doing, changing and accomplishing the tasks in various sectors in the world. Yet, the menaces of police atrocities, brutalities and deaths in lockups are not coming down. According to 'India: Annual Report on Torture, 2019' published by the National Campaign against Torture (2020), the National Human Rights Commission (NHRC), India has recorded a sum of

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1,723 cases of loss of lives in judicial as well as in police custody throughout India. The Report dictates that the above number of cases includes 1,606 deaths in judicial custody and 117 in police custody, which discloses the death of an average of five persons in custody per day.

In addition, an analysis of the Human Rights Cases Statistics shows that a total of 735 custodial death cases have been registered from January – 1st July 2020 [1]. Among these, 42 cases relate to Police custody while the remaining 693 cases pertain to judicial custody. After careful analysis of the above monthly wise report, it comes to be known that roughly 4 persons per day have died either under police custody or under judicial custody (from January – June 30, 2020). Approximately Rs.2,77,551 (*Rupees Two Lakhs Seventy-Seven Thousand Five Hundred and Fifty-Five Only*) has been awarded as monetary relief per death. Hence, a sum of Rs. 1,36,00,000/- (*Rupees One Crore thirty-Six Lakhs only*) has been awarded for 49 deaths in judicial custody. To the shock and surprise of the public, none of the police officials were convicted [2]. Therefore, it is essential to analyse the lacuna in the existing criminal jurisprudence, and stringent measures are the need of the hour to control the menace of police audacity and atrocities.

Objectives of the Research

The research aims:

- o To know the powers of the police to torture the public under the guise of investigation
- o To know the relevant laws and its limitations on the powers of the police
- o To know the judicial approach to curtail the menace of torture by the police, and its implications
- o To know the feasibilities of technologies to be implemented during the investigating process.

Research Question

1. Whether the police have the unfettered rights to torture the detainees or accused? If so, to what extent?
2. Whether the laws in India allow the police officials to use third-degree methods in the name of investigation?

3. What are the judicial mechanisms to check the menace of torture by the police?

4. What are the possibilities of implementation of the technologies during the investigating process?

Methodology

This research is out and out based on non empirical method. For the purpose of the research, secondary data such as books, articles, news papers, case laws, and legal provisions of Indian Laws are collected and analysed.

Methods of Torture by Police

The Report 2019^[3] highlights 15 top methods of torture and deaths in police custody. It states three significant situations under which the suspects are tortured, namely i) to punish them ii) to gather information and iii) to extract confession. Besides extracting crucial information by force from the suspects or their relatives, the report further emphasizes that the police use common methods of torture such as slapping, kicking with boots, beating with sticks, pulling hair etc^[4]. The police use other brutal techniques like, hammering iron nails in the body, applying roller on legs and burning, *falanga*, stretching legs apart in the opposite side, hitting in private parts, stabbing with the screwdriver, electric shock, pouring petrol in private parts, applying chilli powder in private parts, beating while being hand-cuffed, pricking needle in the body. Other inhuman harassment methods are branding with a hot iron rod, beating after stripping, urinating in mouth, inserting a hard blunt object into the anus, beating after hanging upside down with hands and legs tied, forcing to perform oral sex, pressing fingernails with pliers, deprivation of food and water, beating with iron rods after the victim is suspended between two tables with both hands and legs tied, forcing to do *murga* pose or stress position and kicking in the belly of the pregnant women^[5].

Here the questions are i) On what authority do the policemen indulge in the above mentioned brutality, inhumane and degrading activities? ii) Do the policemen have rights to torture the detainees even without maintaining the minimum amount of human decorum or humaneness? iii) Are the detainees under the servitude of the policemen? iv) Are the policemen above the law

of the land? With these questions in mind, the authors intend to discuss the legal provisions of the various enactments including the international conventions regarding the brutal torture by the policemen.

LEGAL SANCTITY OF TORTURE BY POLICE: VIEWS OF INTERNATIONAL CONVENTION/ COVENANTS ABOUT TORTURE

1. Clause 39 of the Magna Carta, 1215 states, “No freeman is to be taken or imprisoned or disseised of his free tenement or his liberties or free customs, or outlawed or exiled or in any way ruined, nor will we go against such a man or send against him save by lawful judgment of his peers or by the law of the land”.

2. Universal Declaration of Human Rights (UDHR), 1948 and International Covenant on Civil and Political Rights (ICCPR), 1966, insist, “No one shall be subjected to torture or to cruel or inhuman or degrading treatment or punishment^[6]”.

CONSTITUTION OF INDIA AND THE TORTURE

Article 21 of the Indian Constitution states, “No person shall be deprived of his life or personal liberty except according to procedure established by law” while Article 22 (1) emphasizes, “No person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.” The expression “life or personal liberty” in Article 21 has been held “to include within itself a guarantee against torture and assault by the State or its functionaries^[7]” and Article 22 mandates that the arrested person shall not be denied the right to consult the lawyers of his choice.

CODE OF CRIMINAL PROCEDURE, 1973 (AS AMENDED) ABOUT THE TORTURE

i) Section 41-D of Code of Criminal Procedure 1973 emphasizes, “When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation”.

ii) Section 46 (2) states that while making the arrest, if such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person **may use all the means necessary to effect the arrest**. Still, nothing in Section 46, gives a

right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life^[8]. Further, the arrested person shall not be subjected to more restraint than is necessary to prevent his escape^[9]. When any person is arrested, he shall be examined by the medical officer in the service of Central or State Governments^[10] and the medical officer so examining the arrested person shall prepare the record of examination mentioning therein any injuries or marks of violence upon the person arrested and the approximate time when such injuries or marks may have been inflicted^[11]. According to Section 55-A of Cr.P.C^[12], it shall be the duty of the person having the custody of the accused to take reasonable care of the health and safety of the accused, and every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

Above all, under Section 176 (1-A), it is emphasized that **where any person dies or disappears while such person is in the custody of police or in any other custody authorized by the magistrate or the Court**, in addition to the inquiry or investigation held by the police, **an inquiry shall be held by the judicial magistrate or metropolitan magistrate**, as the case may be, within whose local jurisdiction the offence has been committed^[13]. Despite the mandatory nature of this provision, its compliance is rare. With respect to this provision, in a petition filed before the Supreme Court of India, it has been categorically mentioned that since its enactment, the section has been left untouched and has not been implemented properly, thereby leading to rising custodial deaths.

The Supreme Court of India accepted to hear the plea for mandatory judicial probe in cases of custodial death and rape^[14]. Though there is a mandatory provision for judicial probe under the above Section 176 (1-A), the Judicial probe in Sathankulam incident (*Tuticorin District of Tamil Nadu State*) was held only after the intervention of the Madurai Bench of the Madras High Court^[15].

POLICE STANDING ORDER AND TORTURE

Police Standing Order (PSO)^[16] under the heading “*Ill-Treatment by the police*” states, “directly an accused person is placed under arrest, the investigating police

officer shall, as the first step in the police investigation, ask him whether he has any complaint, to make of ill-treatment by the police and shall enter in the case diary the question and answer. If an allegation of ill-treatment is made, the investigating officer shall there and then examine the prisoner's body, if the prisoner consents, to see if there are any marks of ill-treatment and shall record the result of his examination. If the prisoner refuses to allow his body to be examined, the refusal and the reasons therefore shall be recorded. If the investigating officer finds that there is reason to believe the allegation of ill-treatment, he shall at once so far suspend the investigation on which the prisoner has been arrested and to forward the prisoner with his complaint, the record of corporal examination, any other evidence available, and, if possible the police officer implicated by the prisoner's complaint to the nearest magistrate having jurisdiction to enquire into the case".

A bare reading of the above provisions under various enactments in India including the International covenants makes it crystal clear that ill-treatment, cruelty, torture, inhumane or degrading treatments are strictly prohibited and the persons arrested have to be treated with utmost care, caution and dignity. Instead, there are past and current reports that the police forces allegedly employed such practices in a routine manner, which resulted in custodial deaths either in the police station or in judicial custody.

COURTS' VIEW ON TORTURE AND THE CUSTODIAL VIOLENCE

The Apex Court of India in *Radul Sah Vs State of Bihar* ^[17], emphatically observes, "It is necessary to educate ourselves into accepting that, respect for the rights of the individual is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers". In *Smt. Nilabati Behera Vs State of Orissa* ^[18], the Supreme Court of India while observing that custodial death is perhaps one of the worst crimes in a civilized society governed by rule of law ^[19], held, "There is a great responsibility on the police or prison authorities to ensure that the citizens in their custody are not deprived of their right to life. The court further, held that the precious rights guaranteed by Article 21 of the Constitution of India cannot be denied

to convicts, (under trials or other prisoners) in custody except according to the procedure established by law. Further, the court went on to state that the concept of sovereign immunity being inapplicable and alien to the concept of fundamental rights wrongdoer is accountable and the State is responsible, if the rights are violated ^[20]."

Dr J.S Anand, J in his concurring judgment^[21], mandates, "It is an obligation of the State to ensure that there is no infringement of the indefeasible rights of a citizen to life, except in accordance with the law, while the citizen is in its custody". Moreover, in *Devinder Singh & Others Vs State of Punjab through CBI* ^[22], the Court held that "Act of beating or confining a person illegally is outside the purview of duties".

In *D. K. Basu v. State of West Bengal* ^[23], again the Supreme Court of India held as under

"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".

Further, the Court in the above case has held, **"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 a law unto himself thereby leading to anarchy^[24]". **No civilized nation can permit that to happen, the Court asserts** ^[25].

The Supreme Court further wonders whether *a citizen sheds off his fundamental right to life, the moment a policeman arrests him and it also questions if the right to life of a citizen be put in abeyance on his arrest. The answers to the above questions were negative* ^[26].

The Court further expresses its anguish, "police are, no doubt, under a legal duty and have legitimate

right to arrest a criminal and to interrogate him during the investigation of an offence but it must be remembered that the law does not permit the use of third-degree methods or torture of accused in custody during interrogation and investigation with a view to solving the crime. The end cannot justify the means. The interrogation and investigation into a crime should be in true sense, purposeful to make the investigation effective. By torturing a person and using third-degree methods, the police would be accomplishing behind the closed doors what the demands of our legal order forbid. No society can permit it^[27].”

The Top Court of India in the above case reiterates, “Death in custody is not generally shown in the records of the lock-up and every effort is made by the police to dispose of the body or to make out a case that the arrested person died after he was released from custody. Any complaint against such torture or death is generally not given any attention by the police officers because of ties of brotherhood. No first information report at the instance of the victim or his kith and kin is generally entertained and even the higher police officers turn a blind eye to such complaints”.

Even where a *formalis* prosecution is set in motion by the victim or by their relatives, no direct evidence is available to prove the charges since all the tortures are happening away from the public look. Moreover, the eyewitnesses are either policemen or the co-prisoners who are disinclined to come out as a prosecution witness due to fear of retribution by the police officials. It is also very difficult to get evidence against policemen since they are in charge of the police station. Consequently, the erring policemen are liable to be acquitted for want of evidence. Therefore, the torture in police custody receives encouragement and builds up in the minds of the police that no one is against the police and none can harm the police. Eventually, the ruthlessness of the police is encouraged and the society suffers. “It is no part of an official to commit an offence, and never can be^[28].”

REQUIREMENT OF SANCTION UNDER SECTION 197 OF CR.P.C TO PROSECUTE THE POLICE OFFICIALS FOR CUSTODIAL DEATH OR TORTURE

The Supreme Court of India in *Devinder Singh & Others Vs State of Punjab through CBI*^[29] answered that ordinarily the shield of sanction under Section 197 of Cr.P.C is not required for offences which have no connection with the official duties. “A public servant not entitled to indulge in criminal activities and to this extent, the sanction has to be construed narrowly and in a restricted manner”. Moreover, in some cases, the Court observed that “The protection of sanction is an assurance to an honest and sincere officer to perform his public duty honestly and to the best of his ability. However, the performance of an official duty under the colour of public authority cannot be camouflaged to commit a crime^{[30],[31],[32]}.” Interestingly, in *Devinder Singh & Others Vs State of Punjab through CBI*^[33], the Supreme Court upheld the argument put forth by the CBI that “in cases of criminal activities, fake encounters, **custodial death due to torture etc.**, sanction to prosecute is not at all required as fake encounters, torture in custody and other criminal acts complained of do not form part of their official duties”.

Conclusion and Suggestions

In spite of the Constitutional and statutory provisions including International Conventions, decision and directions promulgated by the Apex Court of India and the NHRC, there is a constant increase in the custodial torture, custodial death and custodial ill-treatment which is a disturbing factor that causes deep anxiety in the society. In these circumstances, the authors wish to recollect the order passed by the Tamil Nadu Government whereby the school teachers and parents are prevented from inflicting corporal punishment to their children assuming that such punishments are in contravention of Human Rights as well as the fundamental rights guaranteed by the Constitution. The author assumes that the duo, *teachers and parents* are, whenever there is a need (not in all cases) to mend the behaviour of their children with good faith and to mould them to make their wards suitable to their society are, as a means of correctional measures giving lineal corporal punishment during the early childhood and not after that. There is a proverb that “*as the twig is bent, so is the tree inclined*”. In such a situation like this, the authority with which the law enforcing agencies are brutally assaulting the people who are mostly from the underprivileged and weaker sections of the society is questionable. Remembering

the ongoing incidents in the State of Tamil Nadu, especially during the COVID-19 pandemic situation, the authors with a hardened heart, high trust and the only objective of protecting human lives from the hands of the law enforcing agencies particularly the policemen, the authors highly recommend The Prevention of Anti-Torture Act with a comprehensive analysis taking into consideration the 113th, 152nd and 273rd Reports of Law Commission of India and the UN Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment. The authors further appeals to adopt the support of the technologies in this regard. Therefore, the authors to avoid any such human loss in future (in the technological era), suggest the following measures:

1. In all the police stations, *at least* two psychiatrists and one advocate must be appointed.

2. Proper and periodical training must be given to the police officials to inculcate right perception of the laws and their latest developments to secure human lives and values.

3. The presence of *at least* one advocate and one psychiatrist during the interrogations or investigation must be made mandatory in the station to prevent the third-degree methods. Advocates may be appointed either on a temporary or *Adhoc* basis in this regard.

4. The CCTV cameras must, if not installed, be installed forthwith in all the police stations and throughout the enquiry, investigation and till the accused produced before the court, the CCTV should be in operation. Since, the electronic evidences are, after the adoption the Information Technology Act, 2000, admissible before the court (*See Evidence Act, 1872 Section 3*); whenever necessary the CCTV footages must be produced before the court.

5. Penal provisions may be incorporated in I.P.C, 1860 for failure to have advocates and psychiatrists and for switching off the CCTV during the interrogations or investigations. If the CCTV is switched off or not working during the course of investigation (*i.e, right from the accused brought to the station and till he produced before the court*), the Court shall presume that the police has caused the torture or assaulted the accused in the police station.

6. Complaint against police officials in this regard should be sent through registered post with acknowledgement due to Chief Judicial Magistrate (CJM) in case of custodial violence that does not amount to death or Session Judge in case of custodial violence that amounts to death. They in turn, shall forward the complaint to the nearest Law College Principal for investigation who along with not exceeding two Professors/Associate Professors or with Assistant Professors shall conduct an enquiry and submit the report to the CJM or the Sessions Judge, for necessary action either for departmental action or for criminal proceedings or both as the case may be. The entire enquiry must be completed within one month. Based on the report, CJM or Session Judge as the case may be, may request the concerned Public Prosecutor to initiate criminal proceeding against such erring law enforcing agencies.

7. A copy of the report shall be forwarded to the concerned Superintendent of Police (SP) through the Principal District Judge (PDJ) to initiate action on the delinquent. Failing which, the PDJ shall request the concerned Public Prosecutor to intimate the matter to the D.I.G of police, who in turn, without any unnecessary delay should take action against such erring police officials including the SP.

8. Public awareness must be created about the rights of the public and the limited rights of the police.

9. Awareness must be created about Sections 330 and 331 of I.P.C, and Section 330 of I.P.C must be suitably amended to make the offence as non-bailable and triable by the Court of Session, considering the influential position of the law enforcing agencies.

10. Section 327 of IPC has to be suitably amended to include “money value” and the offence must be tried by the Court of Session, considering the influential position of the law enforcing agencies, and the erring law enforcing agencies have to be booked under this Section also.

11. A new Section 154A shall be incorporated in Code of Criminal Procedure 1973 as recommended by the Law Commission of India in its 152nd report and its recommendation clause 154A (2) may be modified in consonance with the suggestion mentioned in suggestion no.6.

12. Section 154 (3) of Cr.P.C may suitably be amended to provide disciplinary action for dereliction of duty, against the erring officer in charge of the police station, and Section 166A of I.P.C may also be amended to provide punishment up to three years and to make the offence ‘non bailable’.

13. As recommended by the Law Commission of India in its 152nd Report, explanation to Section 197 shall be inserted in Code of Criminal Procedure, 1973 forthwith.

14. As recommended by the Law Commission of India in its 152nd Report, a provision *namely* “Section 114-B” shall be incorporated in the Indian Evidence Act 1872 forthwith.

15. Section 3 of The Prevention of Torture Bill 2017 must be revisited to include ‘confession’ and ‘to the person himself’, since it is mentioned in the Bill from any person (*See also The Prevention of Torture Bill 2010*) and a modified Bill must be introduced fixing fine amount ‘not less than Rs. one lakh’ (Section 4 of Bill, 2017) without undue delay in the Parliament, providing stringent and immediate measures.

“*Fiat Justitia Ruat Caelum*” – Let Justice be done though the heaven Falls

Future Scope

This paper focus on the brutal incidents that happened in the State of Tamil Nadu and the suggestions mentioned are having a wider scope for research in future also. Till the meance is considerably reduced, this paper this topic is researchable and debatable one.

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