

CUSTODIAL TORTURE AND HUMAN RIGHTS IN INDIA

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*"All states to put an immediate end to practice of torture and eradicate this evil forever through the full implementation of the UDHR as well as the relevant conventions, and where necessary, strengthening of existing mechanism. The World Conference on Human Rights calls on all states to cooperate fully with the Special Rapporteur on the question of torture in the fulfillment of his mandate."*¹

What is torture?

The word torture has been defined by Article 1 of the United Nations General Assembly on 10th December, 1984 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 third person, information or confession, punishing him for an act, he or third person has committed or suspected of having committed, or intimidating or coercing him or 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 officer or other person acting in official capacity."²

Torture is a process that starts with the arrest usually at night, with a formidable display of power and unnecessary use of violence which often follows unsystematic violence including beating, kicking and other humiliations. The term 'torture' with reference to the police custody implies infliction of severe pain or suffering, whether physical or mental, intentionally for the purpose of extracting from the persons who is in the police custody, or a third person, information or confession or coercing or intimidating him or the third person to divulge the truth.

Physical torture methods:

- a. Beating;
- b. Electric shocks applied to the most sensitive areas of the body;
- c. Victims head is forced under water till the stage of suffocation;

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1. World Conference on Human Rights at Vienna held in June 1983.
2. The Convention on Elimination Of Torture came into force on 26.6.1987 and 120 countries including India have signed the Convention

- d. Victim's skin is burned by cigarettes or red-hot iron rods;
- e. Victim is suspended for hours on end of his arm or by his legs;
- f. During detention, filthy food and drinking water are provided;
- g. Prisoners are packed in small cell and forced to sleep by turns;
- h. Beaten systematically, under the feet until the soles is badly damaged.

Indeed nothing has tarnished the image of police more than brutality directed against person in police custody. Third degree method of torture and custodial deaths have become an intrinsic part of police investigation in fact Section 23 of Indian Police Act 1861 envisages the duties of police officer which should be carried and enforced with purity, activity, vigilance and discretion.³

Custodial torture has become a common phenomenon and routine police practice of interrogation these days. It causes momentary public uproar but once incident fades away from the public everything is forgotten.⁴ Expression concern about the agony if arrested person in the custodial investigation, the Supreme Court in *Sheela Barse vs. State of Maharashtra*,⁵ observed, "whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest, and in case of every arrest it must be immediately be known to the arrested person that he is entitled to apply for bail....".

The court further held that the nearest relative or friend of the arrested person should also be immediately informed about such arrest.

What are Human Rights?

Section 2(d)⁶ of the Act defines human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Convention and enforceable by courts in India. Human rights are therefore, those rights which belong to an individual as a consequence of being human as a means to human dignity. They are rights which all men everywhere at all times ought to have, something of which no one may be deprived without a grave affront to justice.⁷

The Constitution of India under the Article 32(2) confers the power on the Supreme Court to issue writs for the enforcement of the Fundamental

3. S.K.Ghosh, Police Informant, 1981, p.27.

4. Custodial Torture in Law and Practice with Reference to India by S.R.Sani, JILI Vo1.36 No.2 (1994) April-June-1994.

5. 1983Cr.LJ642

6. Protection of Human Rights Act, 1993.

7. Maurice Cranston, What are Human Rights? p.36.

Rights. The citizens also enjoy the rights to move the Supreme Court directly for the enforcement of their fundamental rights under Article 32(1) of the Constitution.⁸ The Supreme Court is thus the protector and guarantor of the fundamental rights to life being the most important one.

Supreme Court's Directive for avoidance of custodial torture:

The Supreme Court has expressed its concern for custodial commission of crime during investigation and interrogation and laid down certain principles to be followed by concerned police officers in its historic decision in *D.K Basu vs. State of West Bengal*⁹. The directions of the Apex Court are as follows:

a) The police officer carrying out the arrest shall prepare a memo of arrest at the arrest and such memo shall be attested by at least one witness who may either be the family of the arrestee or a respectable person of the locality from where the arrest is made.

b) The person arrested must be made aware of his rights to have someone informed of arrest or detention as soon as he is put under arrest or is detained.

b) An entry must be made in diary at the place of detention giving all details about, the friend/relative or person informed.

c) The arrestee should, where he so requests, be also examined at the time of arrest and major and minor injuries, if any present on his/her body, must be recorded at the time. The 'inspection memo' should be signed both by the arrestee and the police officer affecting arrest.

d) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody.

e) Copies of all documents including memos of arrest should be sent to the Illaqua Magistrate for his record.

f) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

g) A police control room should be provided at all the district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest within 12 hours of affecting the arrest and this should be displayed on the conspicuous notice board at the police control room.

The Apex Court opined that failure to comply with the above requirements will render the officer concerned liable to be punished for contempt of court besides the usual departmental action against him.

8. The court confers similar power on the State High Court under Article 226.

9. AIR 1997SC 3017.

The court in this case condemned the tortuous method adopted by the police and observed

“Torture has not been defined in the Constitution or any penal laws. Torture of a human being by any other human being is essential an instrument to impose the will of the ‘strong’ over the ‘weak’ by suffering. The word ‘torture’ today has become synonymous with the darker side of human civilization and the custodial violence including torture and death in the lockup strikes a blow at the rules of law.”

Judicial interventions against torture:

Rarely in cases of police torture or custodial death, is direct ocular evidence available of the complicity of the police personnel, who alone can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues.¹⁰

Conclusion:

Police has to make law and order for preserving peace on any occasion. It has a very important role to play in a democratic set up of government. They are supposed to protect the people and uphold law. But if they themselves become criminal then it is the end of civilized society. Police are the government agencies responsible for crime control and maintenance of law and order, unless there is place, there can be no development growth and prosperity of the people. The function of police has a direct bearing on human rights.

10. State of M.P. v. Shyam Sunder Trivedi and Ors. 1995 (4) SCC 262.