

‘CUSTODIAL VIOLENCE: AN EGRIGIOUS AMESS’

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“To deny people their human rights is to challenge their very humanity.”

~ Nelson Mandela

ABSTRACT

Custodial Violence is reckoned as one of the most canvassed and debated topic in Indian legal framework. This issue is more or less a ubiquitous one in India despite of passing several prominent judgments and legislations in this regards. It is a paradox that in a country which practices and professes the concept of non-violence and protection of rights and also has the bulkiest constitution in the world, is unable to preserve the rights of its prisoners. The fundamental principle of legal system is ‘presumption of innocence’ meaning thereby, an accused is innocent until proven guilty. Keeping in consideration this, the question of infringing upon the rights of undertrial prisoners should not arise at the first place. The paper throws light on the menace of custodial violence in India and its associated aspects.

Keywords: Custodial Violence, Debated, Judgments, Innocence, Guilty

INTRODUCTION

The prevention of torture against the prisoners has always been one of the paramount considerations for almost all the worldwide agencies working for the protection of human rights, be it Amnesty, Human Rights Watch or National Human Rights Commission of India. The harsh reality of administration of justice is not just about the problem of delayed justice delivery but there is even an extensive issue. Before the prisoners could knock the doors of the court they are already compelled to suffer a lot by making them to go through third degree torture and ruthlessness by the police authorities. The vindication behind the aggravation of this issue with time is its ignorance. From common people to the concerned authorities anyone seldom stood for the victims of custodial violence in a manner that could bring about a considerable change. This public denial of existence of this social evil and its hushed acceptance has always acted as a green flag for the wrongdoers. The fact that there are laws in India to monitor this social evil and also from time to time authorities have attempted to curb this issue at their levels cannot be denied and but it is rightly said that laws are mere dead letters if they are not in direction of rightful implementation. There is an earnest need to address this unevenness in our criminal justice system which turns a blind eye in case of Custodial Violence.

‘Torture’, first time ever been recognised by the Universal Declaration of Human Rights in the year 1948, this concept has been enshrined in Article 5 of UNDHR which reads as, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. But despite of being signed by its member countries and gathering worldwide support this has just remained on papers, although in some countries this issue is seeing an ebb but in India it still persists. It is strongly believed in criminal justice system that even if the accused has been proved guilty he does not cease to be a human and therefore, reserve his right to claim basic human rights, most vital of which is ‘Right to life’. This right is not just a human right but also a constitutional right, guaranteed by Article 21 of the Indian Constitution and a right conferred by Article 3 of Universal Declaration of Human Rights. It is a desolating facet of reality that prisoners are not just abused physically in a brutal manner but are also kept in barbaric and inhumane conditions which is a straight contravention of his right to life.

There are multiple such instances which often make the headlines of daily newspapers where the accused are met with harsh treatment when in custody but still people live in a state of

denial. It often considered that power can make man go dizzy and same is the condition with the police authorities. The pain inflicted in the police cells is often a secrecy and not very openly discussed and deliberated upon, or to frame it other way it can be said that it is known yet not acknowledged and can be termed as so called 'public secret'. The victim in such kind of scenarios is a total helpless soul who can't defend himself even if he want to because whenever he makes an attempt to do so ends himself in even a greater problem. This situation is similar to when a person is stuck between devil and the deep blue sea. So, the prisoner looking at the danger posed to them by the authorities along with an intimidation to keep numb, completely destroys the autonomy of the person. A lot more that goes on there in the psychology of the torturer is a 'power game'.

The statistics pertaining to custodial violence are really disturbing and formidable. As per the reports by a rights group, a total of 1,731 people died in custody in India during 2019. This works out to almost five such deaths daily which if we see in practical sense is not a small figure.¹ Further, as per the statistics shared by the ministry of home affairs in the Lok Sabha, a total of 5,221 deaths occurred in judicial custody and 348 deaths in police custody in merely 3 years. An increase in custodial deaths was reported in states like Uttar Pradesh, Madhya Pradesh, and West Bengal in the year 2018-19, 2019-20, 2020-21, as per the data said.²

The darker side of this aspect is even worse as this figure is way more than it seems because many such cases go unreported.

Throwing light on the ways adopted by the authorities to induce the prisoner to self-incriminate or whatsoever, police often opts methods like beating with cane on the sole bare foot (most common), beating on spine, compelled extraction of tooth, public flogging, suffocating, hitting on spine, stabbing with sharp instruments and denial of medical treatment to name a few. These methods often ends up taking lives of the victims.

All these are the extremes of brutality but this is how the reality looks like. The above mentioned methods are adopted for male prisoners but the position of some female prisoners is not good either. At times female prisoners are often subjected to sexual violence and molestation commencing with a verbal abuse questioning their chastity and often ends up in rape.

This way of treating a person who is merely accused of a crime is not just inhumane but has a detrimental impact on the state of mind of the victims giving them a lifelong mental scar and nightmares.

Custodial violence should not be viewed monotonously as being concerned only with physical torture as it involves mental torture in its ambit as well. These include, coercion of the prisoners to do or spectate the acts which their souls would never allow to do willingly, depriving them of food or water, humiliation in front of all, threatening, using derogatory and abusive language for the victim or his family, keeping the victim in exceptionally unhygienic ambience or giving misleading information to give them mental turmoil.

There are several provisions in the Indian law which have the capacity to curb the menace of custodial violence as discussed below.³

LEGAL PROVISIONS PERTAINING TO CUSTODIAL VIOLENCE

1. First and foremost is Article 21 of the Constitution of India, 1950 which provides for right to life and personal liberty to not just the citizens but this right also extends to non-citizens. It further states that no person can be denied right to life and personal liberty except according to procedure established by law. This right clearly comprises of right to live one's life with dignity.
2. Further Chapter V of the Code of Criminal Procedure, 1973 deals with the safeguards and rules which need to be adhered to while arresting a person which acts as a watchdog on police authorities in case of illegal detentions.
3. Indian Evidence Act, 1872 (Section 25) provides that a confession to a police officer cannot be proved as against a person accused of any offense and hence not admissible, confession caused by threats would be irrelevant in criminal proceedings. Hence, custodial violence is not *pe se* barred however the evidences carved out by this means are inadmissible in court of law.
4. Articles 20(3) and 22 of the Constitution further manifest the constitutional protection extended to every citizen and the guarantees held out for making life meaningful and not a mere animal existence. Article 22 provides four fundamental rights with respect to

conviction. Namely, being informed of the grounds of arrest, to be defended by a legal practitioner of his choice, preventive detention laws, and production before nearest Magistrate within 24 hours of the arrest of that person.

5. India also signed the UN Convention against Torture or Other Cruel, Inhuman, or Degrading Treatment or Punishment (UNCAT) in 1997 which is a step ahead to deal with this problem.
6. The 185th Law Commission Report also recommends the rights of arrested persons with respect to the Indian Evidence Act, 1872 (Section 27).
7. Indian Penal Code, 1860 under sections 330, 331, 342 and 348 deter a police officer who is empowered to arrest a person and to interrogate him during an investigation from resorting to third-degree methods causing any form of torture to the detainee’.
8. As per the amendments brought to Section 376 of IPC, as a consequence of Mathura Rape case it now penalizes custodial rape committed by police officers.
9. In this regard Indian Police Act also provides for safeguards like Section 7 and which prescribes for penalty and dismissal of officers who commit violation of various constitutional and statutory safeguards.⁴

LANDMARK JUDICIAL PRONOUNCEMENTS

1. In the historic *DK Basu v. State of West Bengal*⁵ case which started in 1986 with a letter discussing the menace of custodial deaths in West Bengal. This letter was given the status of a writ petition and Public Interest Litigation was initiated in this regard and twenty commandments were released in addition to five other procedural, monitoring, and coordinating orders, few of them are given below:
 - ⇒ Police Personnel carrying out the arrest must bear accurate, visible and clear name tags with their designations.
 - ⇒ Police personnel carrying out arrest shall prepare a memo of arrest at time of arrest which shall be attested by at least one witness and countersigned by the arrestee and shall contain the date and time of arrest.

- ⇒ The person who has been arrested and locked up in the custody must have one friend or relative or other person known to him having interest in his welfare being informed.
 - ⇒ The time, place of arrest and venue of custody needs to be notified by the police where the next friend or relative of the arrestee lives outside the district or town through Legal Aid Organization in District and Police Station of area concerned telegraphically within a period of 8-12 hours after arrest.
 - ⇒ The person arrested must be aware of this right to have someone informed of his arrest.
 - ⇒ An entry must be made in the diary at place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and names of police officials concerned.
 - ⇒ A police control room shall be provided at all districts and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing arrest within 12 hours of arrest and must be displayed at a conspicuous notice board.
2. The case of *Nilabati Behera v. State of Orissa*⁶ was also a turning point in reference to this concept. The mother of the deceased initiated a complaint for death of his son in the police custody and claimed a compensation of approximately Rs.1.50 lacs. Allowing the compensation, the apex court held the responsible police officers as liable. Prior to this case, there was nothing like granting compensations in the cases of custodial death.
 3. In *Joginder Kumar v. State of UP*⁷ the apex court has held that an arrest cannot be made on mere fact of suspicion and such arrest will not be considered justified and also suggested some directives to adhere while making arrests.
 4. Last but not the least one very important case in Indian pretext that has the power to bring the most effective change is the case of *Shyamsunder Trivedi v. State of MP*⁸. In this case honorable court held that if any deaths or injury has occurred while in custody the police officials would be presumed to have cause that injury. For this the court directed the insertion of section 114-B of Indian Evidence Act, 1872.

INTERNATIONAL TREATIES CONDEMNING TORTURE

Violence is a matter that is universally condemned and therefore, there are several treaties which deal with the issue of torture and breach of human rights.

1. American Convention on Human Rights {1969}⁹
2. International Covenant on Civil and Political Rights (Article 7){1966}¹⁰
3. African Charter on Human and People's Right {1979}¹¹
4. Convention against torture and other cruel, Inhuman or degrading treatment or punishment {1984}¹²
5. The European Convention for protection of Human rights and fundamental freedoms {1953}¹³

CONCLUSION

It is presumed that police authorities exist for purpose of preserving the citizen's life from the wrongdoers but it turns into sad state of affairs when the same authority becomes the wrongdoer itself and extinguishes people's trust on the police machinery. It is often believed that ignorance of the crime is even a greater crime. Custodial violence is not an issue which is behind the curtains anymore rather it sometimes makes up the front page of our daily newspapers, therefore, ignoring it would not be a viable option anymore. This is a parlous issue needing attention as it's not just disturbing by its nature but also costing people their own lives and their loved ones life. It has become the need of the hour to awaken the concerned authorities of this evil and most importantly educate people of their rights and making them believe that voicing for their rights is their first right and there is nobody who can deny them this because it is not a mere privilege conferred rather they are every human's entitlement by virtue of his humanity.

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