



Police Torture as Mockery of International Commitments

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"Torture is wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralysing 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".-Adriana P. Bartow

No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment³. Fake encounter, torture, custodial death and forced disappearance of accused and common man have become a common phenomenon in today's day to day scenario of life. This is nothing but a mockery of International commitments and pledges to Human Rights Protection, Preservation and Promotion. The value of Human Rights Jurisprudence has shrunk to margin when it comes to the style of working of the Indian Police and handling the issue relating to crimes, criminal and investigation and upkeep of detainees in custody and jails. Thus, India has become a more fertile place of torture and custodial death. In this backdrop, a humble attempt is required to investigate and research the issue so that ground reality lying behind these incidents of atrocities and inhuman behaviors could be brought forth.

The theme of human rights is of universal concern and it cuts across all section of the society ideological, political & cultural boundaries. India is one of the greatest champions of Human Rights in the third world. It has made sincere and significant efforts for Human rights protection which is clear from IIIrd and IVth part of Indian Constitution. But, the ground reality is altogether different. There is a huge gap between theory and practice. The denial of fundamental freedoms and civil liberties, particularly of arrestees, detainees and criminals gives rise to all round unrest and dissatisfactions. It ultimately invites criticism of the system, which boast of being a great supporter of human rights issues. Under these circumstances it is the need of the time to bring forth the root causes of such anomaly an imbalance in the working condition of police, their sensitivity towards Human Rights and human approach; their training and knowledge about this useful concept is of utmost significance.

Atrocities and inhuman behavior have become the identity of Indian Police. Torture of arrestees, the disappearance of suspects, death in fake encounters and in police custody are the common feature of Indian Police system. All these incidents take place under the guise of uniform and authority within the four walls of a police station, lockup and prison where the victims are totally helpless. Under this situation laws and principles which claims for rule of law, fair trial, human rights protection, equality before law and right to life and personal liberty becomes insignificant and holds no value.

No doubt, police is under a legal duty to arrest, interrogate and seek information from criminals and under trials, but it does not mean to take recourse of such means and meth-

ods which are neither permissible nor in consonance with the letter and spirit of supreme law of the land or i.e. they are violates the universal phenomenon of human rights and it's philosophy. Under these circumstances what is the use of Universal Declaration of Human Rights (UDHR) and other international treaties devoted to Human Rights when they are neither followed nor respected in dealing with these people. Certain studies conducted in this regards have revealed that such incidents of Police torture are due to certain flaws and defects in our legal system.

These causes cumulatively lead to distract the police from right and ultimately resulting in violation of human rights. In this pathetic situation, it is necessary to strike at the root causes of the problem, so that causes of Human Rights violations can be combated and curbed. The evil that exists in these people resides in their impunity. They did not have to explain anything to anyone. They did not have to account for anyone, not even their own consciences. The person Being tortured was absolutely at their mercy⁴.

India has rejected all calls to ratify the convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) on the ground that the domestic mechanisms is available in the country, which is capable of preventing brutality and inhuman treatment, in addition to constitutional safeguards. But the provisions of the criminal procedure code, Indian Evidence Act and Indian Penal Code are worthless, since there is no procedure for independent inquiry and compensation of victims. Constitutional remedies too are meaningless for most of the victims as the court procedure take too much time and courts disallow any claims for compensation, directing the victim to claim damages through a civil suit. If a victim of torture in India has a strong case and enough will, he may get some limited redress from the court at least after 20 years. The lack of motivated legal system (lawyer and legal assistance and a defective prosecution) do nothing to provide remedy in this situation. India has not ratified the optional protocol to the CAT, thereby preventing its citizen from making individual complaints to the Committee Against Torture if they feel they have no effective domestic remedies. Thus it is the need of the time search the ways to check the Police torture with the help of domestic laws. Torture is used as a tool of power, writes one expert on the subject.⁵

Torture does not occur simply because individual torturers are sadistic, even if testimonies verify that they often are. torture is frequently part of the state-controlled machinery for suppressing dissent. Concentrated in the torture's electrode or syringe is the power and responsibility of the state.⁶ According to the Amnesty Report on India (Amnesty International India 1992) about 415 persons died in the custody of police and security forces due to torture, between 1 Jan. 1985-1 November 1991. Examining the cases of custody death. The same report points out that more than 42 magisterial enquiries were

conducted, judicial enquiries were ordered in 20 and only in 3 cases the guilty officers were to be convicted by the courts.

In India we have National and State Human Rights Commission for the protection of Human rights and for checking the atrocities by the police and other legal agencies, but, the National and State Human Rights Commission have no authority to change this situation as there is no independent body to inquire into reported cases of torture. Commission judgments are mere recommendations and are often ignored.

The Government itself admitted in Rajya Sabha that 46 persons had already died in police custody due to torture within three months i.e. Jan-March 1993 in Delhi alone. With the help of such data, if the condition of capital is in such manner then what the condition of rural area where lot of illiterate and poor person?

The judiciary has tried to address torture in India. However, its involvement has been limited to select cases, and many instances of torture have gone unreported. The government highlights rare cases as examples to assert that there is rule of law and an ordered society in the country, and most torture cases either not reported due to fear of further prosecution or fail to be prosecuted due to lack of proper laws and corrupt practices.

The Apex court is very conscious of its responsibility to protect the poor and helpless from the Police and custodial torture. The constitution of India under Art. 32(2) confer the power on the Supreme Court to issue writs for the enforcement of the fundamental rights. The Constitution confers similar power on the state High Court under Art. 226. Any victim of custodial torture can move the court directly for the redressal of his grievances merely by writing a letter. The Supreme Court has started treating even the ordinary letters as writ petitions and issued notices to the government, police and to the other concerned authorities.

The behaviors of police towards the inmates in custody, (culpable or innocent) although who reached for complaint, the methods of talking revealed the present status of police in civilised society. The Supreme Court guide line in various judgment and different legislation on the subject which are otherwise sufficient to deal with the situation or not implemented properly by the Authority and result into violation of various right of the people in the custody. Moreover in a landmark judgment in 1996 in the case of D.K.Basu Vs State of West Bengal,⁷ the Supreme Court laid down specific guidelines required to be followed while making arrests with the aim to eliminate violations of human rights in police custody. The principles laid down by the Supreme Court are given here under:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register;
2. That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest;
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre

or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee;

4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest;
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained;
6. An entry must be made in the diary at the 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 the names and particulars of the police officials in whose custody the arrestee is;
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer affecting the arrest and its copy provided to the arrestee;
8. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well;
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record;
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation; and
11. A police control room should be provided at all 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 effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

However mere formulation of guidelines and safeguards would not be sufficient, therefore Supreme Court in D.K Basu case warned that:

Failure to comply with the requirements mentioned shall apart from rendering the concerned official liable for departmental action liable to be punished for contempt of Court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

Now to find the answer to these questions why there is disparity between Supreme Court Judgment & its implementation following questions required to be answered:-

1. Is the executive (Police and other officers) are not obeying Supreme Court judgment. Committed contempt of court. Or
2. There are corrupt officers non of them is answerable to any of them.
3. Is the Number of police officer insufficient to deal the situations effectively i.e Supreme Court order not followed.
4. The People have lack of knowledge and not awering about their right.
5. Police have same identity as police of independence.

REFERENCES

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